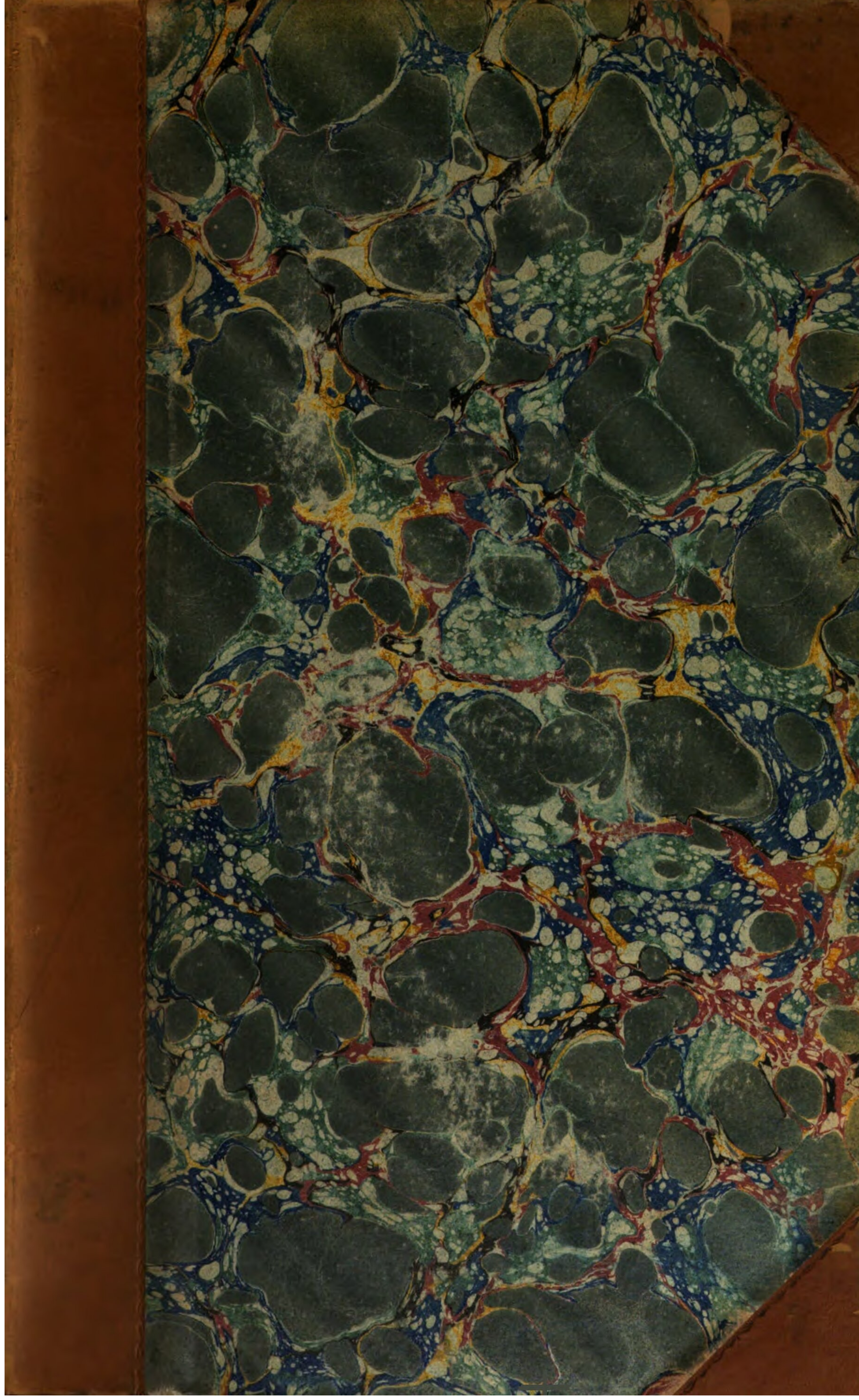




Crim. 59^r

(12

Collection

<36622865440012

<36622865440012

Bayer. Staatsbibliothek 

A
COMPLETE COLLECTION

OF

State Trials

AND

PROCEEDINGS FOR HIGH TREASON AND OTHER
CRIMES AND MISDEMEANORS

FROM THE

EARLIEST PERIOD TO THE PRESENT TIME,

WITH NOTES AND OTHER ILLUSTRATIONS

COMPILED BY

T. B. HOWELL, Esq. F. R. S. F. S. A.

VOL. XII.

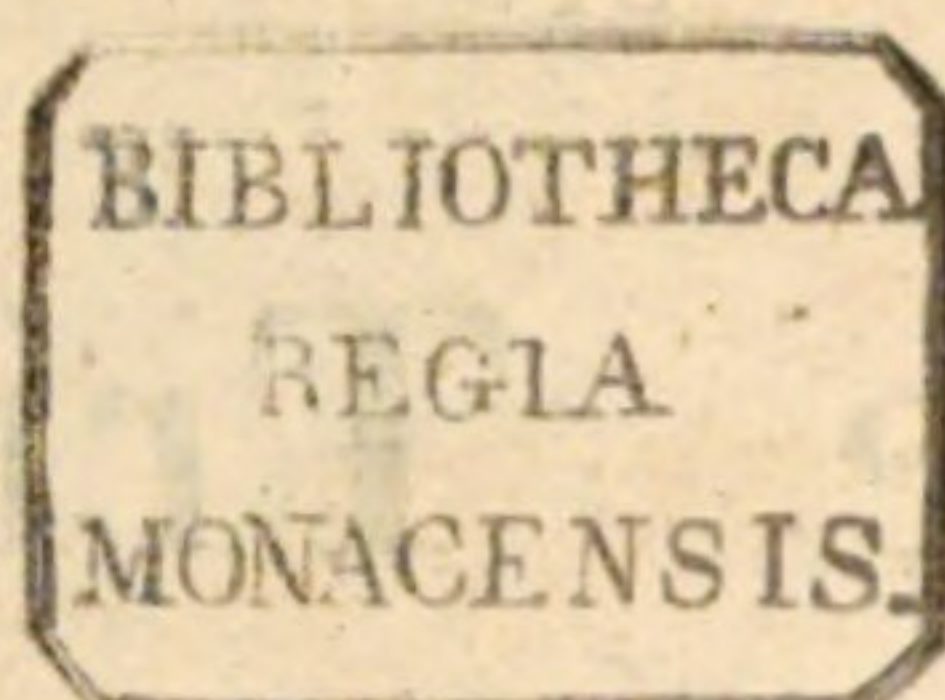
A. D. 1687—1696.

L O N D O N :

PRINTED BY T. C. HANSARD, PETERBOROUGH-COURT, FLEET-STREET:

FOR LONGMAN, HURST, REES, ORME, & BROWNE; J. RICHARDSON; BLACK,
PARRY, & KINGSBURY; J. HATCHARD; E. LLOYD; J. BUDD;
J. FAULDER; J. BOOKER; CRADOCK & JOY; E. JEFFERY;
R. H. EVANS; J. BOOTH; AND T. C. HANSARD.

1812.



PROCEEDINGS FOR HIGH TREASON AND OTHER
CRIMES AND MISDEMEANORS

EARLIEST PERIOD TO THE PRESENT TIME

WITH NOTES AND OTHER ILLUSTRATIONS
COMPILED BY

T. R. HOWELL, Esq. F.R.S. &c.

VOL. XII.

A.D. 1087-1096

L O N D O N

PRINTED BY J. G. ALLEN, STATIONER, 10, ABINGDON STREET, LONDON, E.C. 4.
PUBLISHED BY J. G. ALLEN, STATIONER, 10, ABINGDON STREET, LONDON, E.C. 4.
A. D. 1087-1096

TABLE OF CONTENTS

TO

VOLUME XII.

* * * *The new Articles are marked [N.]*

	<i>Page</i>
355. PROCEEDINGS against ST. MARY MAGDALEN College in Oxon, for not Electing ANTHONY FARMER President of the said College, A. D. 1687-1688.....	1
An Account of the Proceedings at Magdalen College, Oxon, A. D. 1688, by Dr. THOMAS SMITH. [Now first printed from a MS. in the possession of Francis Hargrave, Esq.] [N.] ...	52
356. The Trial of ROWLAND WALTERS, DEARING BRADSHAW, and AMBROSE CAVE, gent. (for murdering of Sir Charles Pymm, bart.) at the Sessions held at the Old-Bailey, before the Right Hon. Sir John Shorter, knt. Lord-Mayor of the City of London, and Sir Bartholomew Shower, knt. Recorder of the same City; together with others his Majesty's Justices of Peace for the City of London, and County of Middlesex, A. D. 1688	114
357. Proceedings relating to the BIRTH OF THE PRETENDER: being the Proceedings had in order to prove the GENUINENESS of the Child alleged to be the Son of King James the Second and his Queen Mary D'Este, Princess of Modena, born June the 10th, A. D. 1688. [N.]	123
358. THE TRIAL OF THE SEVEN BISHOPS: being the Trial of the Most Reverend Father in God, Dr. WILLIAM SANCROFT, Lord Archbishop of Canterbury, and of the Right Rev. Fathers in God, Dr. WILLIAM LLOYD, Lord Bishop of St. Asaph,	

TABLE OF CONTENTS.

	<i>Page</i>
Dr. FRANCIS TURNER, Lord Bishop of Ely, Dr. JOHN LAKE, Lord Bishop of Chichester, Dr. THOMAS KENN, Lord Bishop of Bath and Wells, Dr. THOMAS WHITE, Lord Bishop of Peterborough, and Sir JONATHAN TRELAWNEY, bart. Lord Bishop of Bristol, at the King's-Bench, for publishing a Libel, A. D. 1688	183
Particulars relating to the Trial of the Seven Bishops and to the Persons concerned in it. [From Tanner's MSS. in the Bodleian Library at Oxford.] [N.]	433
359. Trial of JOHN LOVE the younger, and others, for Rebellion, Treason, and Lese Majestie, A. D. 1687. [Now first published from the Records of Justiciary at Edinburgh.] [N.]	523
360. The Trial of Mr. JAMES RENWICK, for High Treason, A. D. 1689. [Now first published from the Records of Justiciary at Edinburgh.] [N.]	570
361. Proceedings against Mr. JOHN HARDY, Minister, at Gordon, for Treason, A. D. 1689. [Now first published from the Records of Justiciary at Edinburgh.] [N.]	586
362. Proceedings in the House of Commons, against ROGER PALMER, Earl of CASTLEMAINE, for High Treason, in going Ambassador to Rome, 1689	598
363. Proceedings against JOHN PRICE, esq. late Receiver of Ireland, and One Hundred other Protestants, at the Assizes at Wicklow, in Ireland, for High Treason against King James, A. D. 1689 ...	614
364. The Trial of MAURICE CAVENAGH, EDMUND POOR, and WILLIAM BOWLAND, in Ireland, for Felony, in stealing Cows, A. D. 1689	630
365. The Trials of Sir RICHARD GRAHME, bart. Viscount PRESTON, in the Kingdom of Scotland, JOHN ASHTON, and EDMUND ELLIOT, at the Old Bailey, for High Treason, A. D. 1691	646
366. Proceedings in Parliament upon the Case of JAY and TOPHAM: and the Defence made by Sir Francis Pemberton and Sir Thomas Jones, for their Judgment given therein, A. D. 1689	822
367. The Trial of HENRY HARRISON at the Old Bailey, for the Murder of Andrew Clenche, Doctor of Physic, A. D. 1692.....	834

TABLE OF CONTENTS.

	<i>Page</i>
368. The Trial of JOHN COLE, at the Old-Bailey, for the Murder of Andrew Clenche, Doctor of Physic, A. D. 1692	875
369. Proceedings before the House of Lords, between the Duke and Duchess of NORFOLK, upon the Duke's Bill, intituled, "An Act to dissolve the Marriage, &c." A. D. 1692	883
370. The Trial between HENRY Duke of Norfolk, Plaintiff, and JOHN GERMAINE, Defendant, in an Action of Trespass on the Case, at the Court of King's-Bench, at Westminster, A. D. 1692.....	927
371. The Trial of CHARLES Lord MOHUN, before the Lords at Westminster, for the Murder of William Mountford, A. D. 1692...	950
372. The Proceedings against Dr. THOMAS SPRAT, Bishop of ROCHESTER, before the Lords of the Privy Council, concerning a Plot to restore King James the Second: being a RELATION of the late wicked Contrivance of STEPHEN BLACKHEAD and ROBERT YOUNG, against the Lives of several Persons, by forging an Association under their Hands, A. D. 1692	1051
PART I. A Relation of what passed at the three Examinations of the said Bishop by a Committee of Lords of the Privy-Council	1051
PART II. The Second Part of the Relation of the late wicked Contrivance against the Lives of several Persons, by forging an Association under their Hands: being a farther Account of the said Forgery, and of the two Authors of it, Stephen Blackhead and Robert Young, alias Youngs, alias Brown, alias Hopkins, alias Hutt, alias Green, alias Jones, alias Smith, alias, &c. Written by the Bishop of Rochester. [N.]	1079
373. Proceedings against CHARLES KNOWLES or KNOLLYS, esq. (commonly called Earl of Banbury) for the Murder of Philip Lawson, gent. A. D. 1692-1693	1167
374. Proceedings in Parliament against Sir ADAM BLAIR, and others, on an Impeachment of High Treason, for dispersing a seditious and treasonable Paper, printed and entitled, "A Declaration of King James the Second," A. D. 1689-1690. [N.]	1207
375. Proceedings in Parliament against JAMES Earl of SALISBURY, and HENRY Earl of PETERBOROUGH, on an Impeachment of High Treason, "For departing from their Allegiance, and being "reconciled to the Church of Rome," A. D. 1689-1690. [N.] ...	1234

TABLE OF CONTENTS.

	<i>Page</i>
376. Proceedings against MATTHEW CRONE, for High Treason, A. D. 1690.....	1238
377. The Trial of WILLIAM ANDERTON, Printer, before the Lord Chief Justice Treby, Baron Powell, Sir John Fleet, knt. Lord Mayor, and Sir Salathiel Lovell, knt. Recorder, at the Old-Bailey, for High Treason, A. D. 1693	1240
378. Proceedings before the Lords of the Council, and the Admiralty ; in relation to the Trials of JOHN GOLDING, THOMAS JONES, JOHN RYAN, DARBY COLLINS, RICHARD SHIVERS, PATRICK QUIDLEY, JOHN SLAUGHTER, and CON- STANTINE DE HARTLEY, as Pirates, though acting under King James the Second's Commission, A. D. 1693	1270
379. Proceedings in Parliament against THOMAS Lord CONINGSBY and Sir CHARLES PORTER, on an Impeachment of High Treason, A. D. 1693. [N.].....	1279
380. Trial of ——— CROSBY, in the King's Bench, for High Treason, A. D. 1695.....	1291
381. Trial of ——— CROSBY, in the Court of King's Bench, for High Treason, A. D. 1695. [Now first published from a Volume of Owen Wynne's MSS. in the Library of All Souls College Ox- ford.] [N.]	1291
382. Proceedings between the KING and THOMAS KENDALL and RICHARD ROE, in the King's-Bench, on an Habeas Corpus upon a Commitment for High Treason, A. D. 1695	1299
INTRODUCTION TO THE TRIALS FOR THE ASSASSINA- TION PLOT, being the INFORMATIONS and DEPOSITIONS touching the Conspiracy against the Person and Government of King William the Third. [N.]	
383. The Trials of ROBERT CHARNOCK, EDWARD KING and THOMAS KEYES, at the Old Bailey, for High Treason, A. D. 1696	1378

COBBETT'S COMPLETE COLLECTION

OF

State Trials.

355. Proceedings against ST. MARY MAGDALEN College in Oxon,*
for not Electing ANTHONY FARMER President of the said
College: 4 JAMES II. A. D. 1687—1688.

A NARRATIVE OF THE ELECTION OF DR.
HOUGH, PRESIDENT TO ST. MARY-MAGDA-
LEN COLLEGE, OXON, 1687.

THE Presidentship of St. Mary-Magdalen
College, in the University of Oxon, being void
by the death of Dr. Henry Clark, late Presi-

* See the passage of Burnet inserted in the
Note at the beginning of the Case of the Vice-
Chancellor of Cambridge, vol. 11, p. 1315, of
this Collection. See also p. 1123.

The following passages in Narcissus Lut-
trell's MS. "Brief Historical Relation," &c.
relate to these proceedings:

"June 15, 1687. Magdalen College, in Ox-
ford, appeared before the Ecclesiastical Com-
missioners, and gave in an answer why they
had not elected Mr. Farmer: and one Dr. Fair-
fax was very bold there, for which he was se-
verely reprimanded, and told he was fitter for
a mad house.

"November. The Commissioners at their
late being at Oxford, did upon the refusal of
the fellows of Magdalen college to own their
power, or the bishop of Oxford to be their Pre-
sident, or subscribe the Paper acknowledging
their crime, they did actually expel about 25
fellows, and ordered their names to be struck
out of their books; and it is said the under
graduates treat the President and the new Man-
damus Fellows with all imaginable scorn.

"December 9. The Ecclesiastical Commis-
sioners met the 10th at Whitehall, and taking
the affair of Magdalen college into considera-
tion again, they declared and announced Dr.
Hough and the 26 Fellows of that college
incapable of being promoted to any ecclesiastical
dignity or benefice; and that such as
were not already in orders were adjudged in-

VOL. XII.

dent of the same, the Vice-President, Dr. Ald-
worth, gave notice to all the fellows present in
the chapel, on Thursday, the 31st of March,
1687; where it was unanimously agreed to
proceed to the election of a President on
Wednesday the 13th of April following, at nine
o'clock in the morning, in the chapel: and in

capable of receiving the same, and it requires
all archbishops and other ecclesiastical officers
to take notice of the sentence, and yield obe-
dience thereto. This severe and unheard of
sentence was opposed by some of the Com-
missioners.

"It is said as if baron Jenner would have
his quietus; some say he boggled at the late
sentence against the Magdalen fellows.

"Sept. 1688. A minister lately dying in
the diocese of Glo'ster, his living in the gift
of Magdalen college, Dr. Hough and some of
the expelled Fellows met and presented a Mr.
Baily (one that was expelled) and he hath ap-
plied to the bishop of Glos'ter for institution
and induction, and it is thought he will have it.

"October. His majesty hath been pleased
to restore Dr. Hough, the President, and Fel-
lows of Magdalen college, in Oxford, and given
the bishop of Winchester, their visitor, order in
the same. Oh! rare invasion, to occasion so
many gracious acts in restoring things to their
old legal foundation, which hath been the work
of some years past to unhinge.

"The Popish Scholars and Fellows that
were lately settled at Magdalen college, in Ox-
ford, have been found since their turning out
to have much embezzled the plate belonging
to the college.

"Several pardons are passing at Whitehall;
it is said the Ecclesiastical Commissioners have
taken them out, the lord chief justice Wright
and baron Jenner."

B

order thereto, the Vice-President caused a Citation to be fixed on the chapel-door of the said college, signifying the vacancy, time and place of the election, according to the direction of the statutes. But before the day of election, being credibly informed that his majesty had been pleased to grant his Letters Mandatory in behalf of Mr. Anthony Farmer, they most humbly represented to his sacred majesty, in their petition bearing date April the 9th, That the said Mr. Farmer was incapable, by their statutes, of being president; and therefore did most humbly pray his majesty to leave them to a free election, or recommend such a person to them as was capable by their statutes.

Monday, April 11, his majesty's Letters Mandatory were delivered by the hands of Mr. Robert Charnock,* master of arts, and fellow of the said college, directed to the Vice-President and fellows of Magdalen-College in Oxon, requiring them forthwith to elect the said Mr. Farmer, and admit him president: which letter the Vice-President read in the chapel of the said college, between the hours of four and five o'clock in the same day, after evening service, before the fellows of the college, there present, and asked them, Whether they, in obedience to his majesty's letters, would forthwith elect and admit Mr. Farmer president? Who all agreed, in consideration to Mr. Farmer's not being qualified, and the danger of expulsion to any of the fellows that should be absent from the election, and that the time of election, according to the Citation, was so near, to defer their Answer till Wednesday following: Whereupon the Vice-President required all the fellows to be present in the chapel the said Wednesday morning at nine o'clock.

All the fellows being then met, the Vice-President read the statute 'De Electione Presidentis;' and the statute 5 Eliz. against corrupt elections was read also: after which the Vice-president read the king's Letter, in behalf of Mr. Farmer, and the second time demanded an Answer of the fellows thereto. Their Answer was to this effect: That having a Petition now lying before his majesty, they ought not to proceed to election, till they had received his majesty's answer to the same: and thereupon they all agreed (except Mr. Charnock) that the election should be deferred; which was accordingly done, until the next morning nine o'clock.

Thursday April the 14th, at nine o'clock in the morning, all the fellows being met, the Vice-President told them, That the election of a President had been deferred upon account of their Petition to his majesty; in answer to which, they had not then received his majesty's pleasure; that the next day was the utmost time they could defer the election by the statutes, and therefore it was necessary they should come to some resolution. He told them

farther, That the king had commanded them to elect Mr. Farmer, and asked their sense therein: which was unanimous (except Mr. Charnock) that the election should be deferred till the next morning eight o'clock; and in order thereunto, the sacrament was to be administered first; and accordingly it was adjourned.

Friday, April 15, at nine o'clock in the morning, the Vice-president and fellows being met, Dr. Thomas Smith and captain Bagshaw, two of the Fellows, acquainted the rest, from my lord-president of the council, That in answer to their Petition, his majesty had sent his letter to the college, 'that he expected to be obeyed.' After which, the Vice-President read again the king's letter to them, and asked, whether, in obedience thereunto, they would elect and admit Mr. Farmer president? They answered, That they desired they might proceed to an election. Then the Vice-President having proposed whether having received his majesty's pleasure in answer to their petition, they would make any further address? the Vice-President, Dr. Fairfax,* Dr. Pudsay, and Dr. Thomas Smith, were for a second address: but all the rest declared immediately for proceeding to the election.

Then the Vice-President proposed, whether they would go to an election *viva voce*, or by scrutiny? The Vice-President, Mr. Thompson, and Mr. Charnock, were for proceeding to an election *viva voce*; all the rest were for going to an election by scrutiny except Dr. Thomas Smith, who was not for going to election, until the king should again be petitioned.

This, therefore, being the sense of the majority, That they ought to proceed to the election of a president, according to the statutes, and this the last day limited for election; in order thereunto, the holy sacrament was solemnly taken by all except Mr. Charnock. Then the statute 'De Electione Præsidentis,' and 5 Eliz. against corrupt elections, was read by the Vice-President. Every one took the oath prescribed in the statutes to be taken, in order to the nomination of a president (except Mr. Thompson and Mr. Charnock, who refused it:) and the two senior fellows were sworn scrutators in the scrutiny of the whole society. For the nomination of a president, Mr. Hough†, and Mr. Maynard had each of them the major part of all the voices; and were accordingly

* Afterwards dean of Norwich.

† Shortly after the Revolution he was made bishop of Oxford, and afterwards successively of Litchfield and Coventry, and of Worcester, in which he continued till his death in 1743, at the age of 92. He was a most excellent man, and united with the spirit and firmness which is displayed in the transactions before us great meekness and sweetness of temper. Nash in his history of Worcester mentions some particulars of him. See too, his Life in the Biographia.

* He was afterwards executed for being concerned in the Assassination-Plot against king William. See his Trial, A. D. 1696, *infra*.

pronounced by the senior scrutator, 'Nominati in Ordine ad Electionem Præsidentis.' Then the thirteen senior fellows being met to elect one of these two President; and every one of them sworn according to the statute; eleven of them elected Mr. Hough, who was accordingly pronounced President of St. Mary Magdalen College in Oxon, by the senior scrutator, in the presence of all the fellows: And Mr. Maynard was appointed by the thirteen senior fellows to present the said President elect to the visitor, in order to his admission. After this, Mr. Thompson and Mr. Charnock declared *viva voce* for Mr. Farmer according to his majesty's letter.

Saturday, April 16th, Mr. Hough, president elect, was presented to the visitor [the Bishop of Winchester, Dr. Peter Mews], by Mr. Maynard, who at the same time delivered to his Lordship an instrument under the College-seal, containing the proceedings of the election: after a sight whereof, Mr. Hough was sworn and admitted President by his lordship, according to the statutes.

Sunday, April 17, Mr. Hough, at his return to the College, took the same oath again before the Society, and afterwards as President took his seat in the chapel, at four o'clock prayers in the afternoon.

A Copy of the King's Mandate to the Fellows of Magdalen-College.

'JAMES R. Trusty and well-beloved, We greet you well. Whereas we are well satisfied of the piety, loyalty, and learning, of our trusty and well-beloved Anthony Farmer, Master of Arts, of that your College of St. Mary-Magdalen, We have thought fit hereby effectually to recommend him to you for the place of President of our said College, now void by the death of Dr. Clark, late President thereof; willing and requiring you forthwith, upon receipt hereof, to elect and admit him, the said Anthony Farmer, into the said place of President, with all and singular the rights and privileges, emoluments and advantages thereunto belonging, any statute, custom, or constitution, to the contrary notwithstanding, wherewith we are graciously pleased to dispense with in this behalf. And so, not doubting of your compliance herein, we bid you farewell.

'Given at our Court at Whitehall, the fifth day of April, 1687, in the third year of our reign.'

A Copy of Magdalen-College's Petition.

To the King's most excellent Majesty;

The Humble PETITION of the Vice-President and Fellows of St. Mary-Magdalen-College in Oxon.

'Most humbly sheweth,
'We have been credibly informed, That Mr. Anthony Farmer, who was not of our foun-

'dation, has obtained your most excellent Majesty's recommendation to be President of your majesty's college, in the room of Dr. Henry Clark, deceased.

'We, therefore, with all submission, as becomes your most dutiful and loyal subjects, most humbly represent to your sacred majesty, That the said Mr. Farmer is a person in several respects incapable of that character, according to our founder's statutes: and do most earnestly beseech your majesty, as your majesty shall judge fittest in your most princely wisdom, either to leave us to the discharge of our duty and consciences, according to your majesty's late most gracious toleration, and our founder's statutes, or to recommend such a person who may be more serviceable to your majesty, and to this your majesty's college.'

A Copy of the Lord Sunderland's Letter to the Fellows.

'Gentlemen; The king being given to understand, That notwithstanding his late mandate sent to you, for electing Mr. Farmer to be President of your college, you have made choice of another person; his majesty commands me to tell you, He is much surprized at these proceedings, and expects you should send me an Account of what passed on that occasion, and whether you did receive his majesty's said Letters Mandate, before you chose Dr. Hough. I am, Gentlemen, Your affectionate and humble servant,

SUNDERLAND.'

The CASE of the Vice-President and Fellows of St. Mary-Magdalen-College in Oxon, in their late Election of a President.

Upon notice of the death of Dr. Henry Clark, late President of St. Mary-Magdalen-College in Oxon, the vice-president called a meeting of the fellows in order to appoint a day for the election of a new President. The 13th of April was the day prefixed, with power to prorogue the election to the 15th, as they should see cause, beyond which time it was not in their power to defer the same. This being agreed, a citation or premonition was fixed upon the chapel-door of the College, signifying the same; and summoning all the absent Fellows to repair home to the ensuing election, as the statute in that case directs. After this, upon the 11th of April, they received his majesty's letter in behalf of Mr. Farmer, requiring them to elect and admit him President: but he having never been Fellow of that College, nor New-College, in which are the only persons capable of being chosen by the statutes; and wanting likewise such personal qualifications as are required in the character of a President, they did not imagine it was, or could be his majesty's pleasure, that they should act so directly contrary to the ex-

press words of their statutes, to which they are strictly and positively sworn: but did humbly conceive they were bound in duty to believe, that his majesty had been misinformed in the character and capacity of Mr. Farmer. And therefore on the 15th of April, the last of those days within which they were confined to finish the election, they proceeded to a choice; and having first received the blessed eucharist, and taken an oath, as the founder enjoins, to choose a person so qualified, as is there specified, they did elect the reverend Mr. John Hough, batchelor in divinity, who is a person every way qualified by the statutes of the said college: and if it shall be objected that his majesty did in his letter for Mr. Farmer graciously dispense with all the statutes that rendered him incapable of being elected; and that therefore they might have obeyed without breach of their oaths: they humbly beg leave to represent, that there is an express clause in that oath, which every man takes when he is admitted Fellow of the College, wherein he swears, not to procure, accept, or make use of, any dispensation from his oath, or any part thereof, by whomsoever procured, or by what authority soever granted. As to their former practice, when they have elected in obedience to the king's letter heretofore, it has been always in such cases where the persons recommended have been every way qualified for the office by their statutes: in which cases they always have been, and ever will be, ready to comply with his majesty's pleasure; it not being without unspeakable regret, that they disobey the least of his commands. They know how entirely their welfare depends upon the countenance of their prince; nor doth any thing more deeply affect and grieve their souls, than when they find themselves reduced to this unfortunate necessity, of either disobeying his will, or violating their consciences by notorious perjuries.

*A Copy of a Letter to the Duke of Ormond,
April the 18th, 1687.*

May it please your Grace;

We the president, and fellows of Magdalen-College in Oxon, sensible of the benefits and honour we enjoy under your grace's patronage, and how much it imports us to have your advice in all the difficulties wherewith we are pressed; having, as we fear, displeased his majesty in our election of a president; do humbly beg leave to represent to your grace, a true state of our case, and hope you will please, to inform the king how incapable we were to perform his commands.

His majesty was pleased, on the death of Dr. Henry Clark, president of St. Mary Magdalen College, to command us, by his letter, to elect and admit Mr. Anthony Farmer in that office, a person utterly incapable of it by our statutes, as we are ready to make appear in many particulars; and since we have taken a positive oath of obedience to them, and that exclusive

to all dispensations whatsoever; we humbly conceive we could not obey that command in favour of Mr. Farmer, unless he had brought those qualifications with him, which our founder requires in the person of the president; and being confined as to the time of election, we have been forced to proceed to the choice of one, who has approved his loyalty in the whole course of his life, and whom we think suitably qualified for the place.

May it therefore please your grace to interpose with his most sacred majesty for us, that we may not lie under the weight of his displeasure, for not being in a capacity for obeying his commands. We know him to be a prince of eminent justice and integrity, and cannot think he will value any instance of duty to himself, which manifestly breaks in upon the obligation of our consciences. And your grace's extraordinary unblemished loyalty to the crown; and that regard which, we assure ourselves, our most honoured lord and chancellor has to the peace and welfare of this place, induceth us to presume your grace will omit no endeavours to set before his majesty the true reason and necessity of our proceedings. That God Almighty protect your grace, shall be the daily prayers of,

May it please your Grace, &c.

*The Bishop of Winton's Letter to the Lord
President of the Council.*

My honoured Lord;

The obligation I have upon me as visitor of St. Mary Magdalen College in Oxon, occasions this address: for I am informed that great endeavours are used with his majesty to recommend one Mr. Farmer, who is not at present, nor ever was fellow of the College, to be president of it; which is directly contrary to the statutes of the founder (as I am confident some, who promote Mr. Farmer's interest, cannot be ignorant of.) And were there not many persons now actually fellows, and several who have been (in particular the bishop of Man,* and Dr. Jessop) very eminent for learning and loyalty, and every way qualified according to the statutes, I should not press your lordship to lay the concern of the College (which hath upon all occasions expressed its zeal and forwardness in defence of the crown, and, as I particularly know, in the great affairs of the succession) before his majesty; who, I hope, will leave them to their rules, as the statutes, which have hitherto (excepting in the times of rebellion) been conscientiously observed, and which will be the highest satisfaction to the truly loyal university, and promote his majesty's service; which has always been the endeavour of
Your Lordship's most humble servant.

* Dr. Baptist Living. He appears to have been an intimate associate of Henry Earl of Clarendon, in whose *Diary* he is often mentioned.

A Copy of the Citation to the Vice President and Fellows, for to appear at Whitehall, June the 6th, 1687.

By his Majesty's Commissioners for Ecclesiastical Causes, and for the Visitation of the Universities, and of all and every Cathedral and Collegiate Churches, Colleges, &c.

Complaint having been made unto us, that the Vice President and Fellows of St. Mary Magdalen College in Oxon, have refused to comply with his majesty's letters mandatory, for electing and admitting Mr. Anthony Farmer president of the same College, in the room of Dr. Clark deceased, and that, notwithstanding his majesty's letters, they have elected Mr. John Hough president of the said College: you and either of you, are hereby required to cite and summon the said Vice President and fellows, requiring them, or such of the said fellows as they shall depute in their behalf, to appear before us in the council chamber at White Hall, upon Monday the 6th of the next month of June, at four in the afternoon, to answer to such matters as shall be objected against them, concerning the premises; and of the due execution thereof, you are to certify us then and there.

Given under our Seal, May 28th, 1687.

To Thomas Atterbury, and Robert Eldows; or to either of them.

The ANSWER of the Vice President, and other Fellows, of Magdalen College in Oxon, who were deputed by the said College, to the Question propounded by the Right Honourable and Right Reverend the Lords Commissioners for Ecclesiastical Affairs, viz.

Why they did not obey his majesty's Letter, requiring them to elect and admit Mr. Anthony Farmer president of the said College?

The said Vice President, and other deputed fellows, answered and said, That the said college of St. Mary Magdalen in Oxon, is a body corporate, governed by local statutes, granted and confirmed to them by his majesty's royal predecessor, king Henry 6, for him and his heirs and successors, under the Great Seal of England; which are also since confirmed by several other patents of others of his majesty's royal predecessors, under the Great Seal of England. That by the said statutes of the college (to the observation of which each fellow is sworn) it is ordered, that the person elected president thereof, shall be a man of good life and reputation, of approved understanding and good temper, discreet, provident, and circumspect, both in spiritual and temporal affairs. And at the time of election of a president, the said fellows are bound by the said statutes to take an oath, that they shall nominate none to that office, but such as are, or have been fellows of the said college, or of New College in Oxon, or if they are not actually fellows at that

time of election, that they be such as have left their fellowships in their respective colleges upon credible [qu. creditable] accounts. And when two qualified persons shall be nominated at the time of election, by the greater number of all the fellows, to the said office of president, the thirteen seniors also swear that they will elect one of them, whom in their consciences they think most proper and sufficient, most discreet, most useful, and best qualified for the place; without any regard to love, hatred, favour, or fear. And every fellow, when he is first admitted into his fellowship in the said college, swears that he will inviolably keep and observe all the statutes and ordinances of the college, and every thing therein contained, so far as does or may concern him, according to the plain, literal, and grammatical sense and meaning thereof, and, as much as in him lies, will cause the same to be kept and observed by others; and that he will not procure any dispensation contrary to his aforesaid oath, or any part thereof, nor contrary to the statutes and ordinances to which it relates, or any of them; nor will he endeavour that such dispensation shall be procured by any other, or others, publicly or privately, directly or indirectly. And if it shall happen that any dispensation of this sort, of whatsoever authority it shall be, whether in general or particular, or under what form of words soever it be granted, that he will neither make use of it, nor in any sort consent thereunto. That upon notice of the death of Dr. Clark, late president of the said college, the vice president called a meeting of the said fellows, in order to the appointing a day for the election of a new president, and the 13th of April was the time prefixed, with power to prorogue the same, as they should see cause, till the 15th, beyond which time they could not statutorily defer their election; and in pursuance thereof a citation or premonition was fixed upon the chapel door of the said college, signifying the same; and by which the absent fellows were summoned to repair home, as the statute in the case requires. And the said vice president and other deputed fellows farther say, that on the 11th of April aforesaid, they received his majesty's Letters mandatory, to elect and admit the said Mr. Anthony Farmer president of the said college: But forasmuch as the said vice president and fellows apprehended the right of election to be in them, and believed his majesty never intended to dispossess them of their rights: and forasmuch as the said Mr. Farmer had never been fellow either of Magdalen or New college in Oxon, and had not those qualifications, which in and by the said statutes of the college are required in the character of a president, as they in their consciences did, or do verily believe; and in regard that they could not comply with his majesty's letter, without the violation of their oaths, and hazard of their legal interest and property, wherewith they are by their statutes possessed, and which by their oaths they are bound to maintain, they represented the same

by their humble petition to his majesty. And having deferred their election of a president to the last day limited by their statutes, then they proceeded to election, and having first received the eucharist, and taken the said oaths, as the statutes enjoin, to choose a person so qualified as before expressed, they did elect the reverend Mr. John Hough, B. D. and one of the fellows of their college, a person every way qualified to be president, who has been since confirmed by the bishop of Winton, their visitor, as the statutes of the said college direct.

And that they might not lie under his majesty's displeasure by their proceedings, they did on the 18th of April, make an humble representation thereof to his Majesty, by his grace the duke of Ormond, Chancellor of the university of Oxon, setting forth their indispensable obligations to observe their founder's statutes.

All which matters the vice-president, and other deputed fellows, do humbly offer to your lordships, and pray to be dismissed with your lordship's favour.

This Answer was signed but by five of the deputed fellows, Dr. Fairfax not consenting to it, who desired their lordships to hear him apart, and take his Reasons why he could not subscribe. After the reading the answer, the lord-chancellor Jeffries being in hopes he would submit, gave him leave to speak, saying, 'Ay, 'this looks like a man of sense, and a good 'subject; let's hear what he will say.' But finding his mistake, and that Dr. Fairfax chiefly insisted, 'That in Ecclesiastical courts 'there should be a libel given to the party 'appealed, that he might know what he is accused of; that he desired that libel, and did 'not know what he was called there for; and 'that the matter did not lie in that court, but 'in Westminster-hall;' the Chancellor endeavoured to baffle his plea, by telling him, 'He 'was doctor of divinity, but not of law.' To this the Doctor replied, 'That he desired to 'know by what commission and authority 'they sat?' Which put Jeffries into such an excessive passion, as made him cry out, 'Pray 'what commission have you to be so impudent 'in court? This man ought to be kept in a 'dark room. Why do you suffer him without 'a guardian? Why did not you bring him to 'me to beg* him? Pray let the officers seize 'him †.'

* So in former edition.

† "This University will be always very careful of any neglect to your lordship, of whose good will and favour to us we have had so much experience.

"My lord, his majesty expressed a fatherly care to us in recommending your lordship to be our chancellor; and your lordship were the most desirable person in the world. But, as we had no notice of your lordship's inclinations that way, or that you would accept of that office; so" &c. Letter, July 1683, from Dr.

Then the Fellows were ordered to withdraw, and after an whole hour's debate, the Vice President was called in alone, and ordered to attend the Court, with the rest of the deputed Fellows, on Wednesday the 23rd of the same month. On the appointed day, the Fellows attended, and gave in the following REASONS against Mr. Farmer.

Whereas the Vice President, and other deputed Fellows of St. Mary Magdalen college in Oxon, have, in their Answer to your lordships, set forth, that by the statutes of the said college it is ordered, That the person to be elected president thereof should be a man of good life and reputation, and of good manners and temper; and likewise, that Mr. Anthony Farmer hath not those qualifications, which in and by the said statutes are required in the character of a president, as they in their consciences did and do verily before believe: they humbly crave leave to represent to your lordships some of those Reasons which induced them to such belief, viz.

That Mr. Farmer did misbehave himself in Trinity college in Cambridge; that he received admonition from the master of the college, in order to his expulsion; which remains in the register of the said college, under his own hand.

That having left Cambridge, he taught school at Chippenham in Wiltshire, under a nonconformist minister, without licence.

That in September, 1683, the said Mr. Farmer was entered into St. Mary Magdalen hall in Oxon, where such frequent complaints were brought against him to the principal, for his troublesome humour and unquiet temper, that, to preserve the peace of the society, he was desired to leave the said hall.

That after his leaving Magdalen hall, he was admitted into Magdalen college; where discoursing about religion, he declared, That there was no Protestant but would cut the king's throat. Notwithstanding which, at other times, he declared to some of the fellows of the said college, That whatsoever he pretended, he was really a member of the church of England; and that he made an interest with some Roman Catholics, only to get preferment by their means, and for that reason was willing to be thought of their religion.

That at the very time when his majesty's Letter came to the college in his behalf, the said Mr. Farmer was at Abingdon in very ill company, where he continued drinking to excess two or three days and nights together; and amongst other disorders, was one of those that then in the night-time threw the town-stocks into the river: and that in general, the said Mr. Farmer hath had the unhappiness to

Ironside, vice chancellor of Oxford, to lord chancellor Jeffreys, whom king James had by mandate required of the University to chuse their chancellor. See Clarendon's State Letters, &c. vol. 2, Appendix.

lie under an ill fame, as to his life and conversation, as by several Letters and Certificates, ready to be produced, will more largely appear.

Copies of Letters and Certificates delivered to the Lords Commissioners for Ecclesiastical Affairs, June 27, 1687.

"1. I Anthony Farmer, bachelor of arts, and scholar of this college, do confess, That I have behaved myself very unlike a member of this college, and even a Christian, at the dancing school: for which I humbly ask pardon, and do acknowledge before the seniority, that I have deservedly received of the master my first admonition in order to expulsion.

ANTHONY FARMER.

Trin. Col. Camb. June 11, 1678.

This is a true copy of Anthony Farmer's Admonition, attested by us, whose names are hereunto under-written.

HUMPH. BABINGTON,

JOHN HAWKINS,

BENJ. PULLEYN,

JOHN LAUGHTON,

} Vice Magist. Deput.

"2. These are to certify, that Mr. Anthony Farmer was usher to Mr. Benjamin Flower, a nonconformist preacher in the town of Chippenham in the county of Wilts, for the space of half a year or upwards, the said Mr. Flower keeping school without licence from the bishop, and the said Mr. Farmer continuing his usher for the time mentioned, without any licence also. Witness our hands,

WILL. LAKE,

WILL. LOUDE,

WILL. GALE,

} Vicar.

"3. Mr. Anthony Farmer was entered of St. Mary Magdalen hall in Oxford, September, 1683. Where, after he had been some time, frequent complaints were brought to me by some of the masters that he raised quarrels and differences among them; that he often occasioned disturbances, and was of a troublesome and unpeaceable humour. Whereupon, that love and friendship might be preserved and continued in the society, as it used to be, I advised the said Mr. Farmer to make trial if he could live more easily and quietly in some other house. Accordingly he did voluntarily leave the hall, July 13th, 1685, and got himself admitted into Magdalen college.

WM. LEVET, Principal.

"4. I do certify, That Mr. William Bambrigg, gentleman commoner of Magdalen hall, Oxon, did say, that Mr. Anthony Farmer, master of arts, did entice him from his studies in the university to go to London, where he the said Mr. Farmer did attempt to draw the said Mr. Bambrigg into several debaucheries, both at taverns and bawdy-houses. Witness my hand, JOHN RYLAND, M. A. Magd. Hall.

"5. I do certify, That Mr. William Bambrigg, gentleman commoner of Magdalen hall, did say, That Mr. Anthony Farmer, master of arts of the said hall, did receive money of

him and other gentlemen, publicly to expose unto him a naked woman, which he accordingly did. Witness my hand,

R. CLERK, M. A. Magd' Hall.

June 9, 1687.

"6. I am very willing to justify any thing I have formerly said, relating to so serious a matter as this you enquire after. Mr. Farmer, one night in the cloister, asked me why I did not get a commission? I told him truly, I had not friends to do it for me. He then asked me, what I would do for one; I told him, I would fight for my king, and whatsoever he should command me. He then asked me, if I would fight for the king's religion? I told him, there would be no occasion for that, nor would it ever be required of me. He asked me of what religion I was? I told him a Protestant. And then he said, there was no Protestant but would cut the king's throat; and that he should lose 3,000*l.* for being of that religion he intended to be of, which he said was a Papist. This, to the best of my remembrance, is the full of what he said. If I have omitted any thing, it is my care not to write more than I would honestly and justly swear to. I am, Sir, &c.

JOHN BRABOURN.

7. "In or about January last, 1687, Mr. Anthony Farmer declared before us, That the report of his being a Papist was false; but that he was willing to be thought so, because it might do him a kindness: That the reason of his acquaintance with Mr. Brent and Mr. Walker, was to get preferment by their interest: that he had not forsaken the Protestant religion; adding, we should call him a rogue, if ever he did: that he would not make any public declaration of this, but would declare it amongst friends, when and where he pleased.

HENRY DOBSON.

JA. FAYRER.

THO. GOODWIN.

8. "I do hereby certify, That Robert Gardiner, porter of St. Mary-Magdalen College, did tell me, that Mr. Farmer did very often come into the college late at night, so much in drink, that he could scarce go or speak.

GEORGE FULHAM.

9. "Upon Monday April the 3rd, Mr. Farmer came to the Lobster in Abington with Mr. Clerk, Mr. Gravener, and Mr. Jennyfar, about eight in the morning, and staid some time in the house, and went from thence to the tavern; returned again about eleven at night, and sat up till one in the morning: the next day they went to the Bush Tavern, and sent for a quarter of lamb for their supper, and there Mr. Farmer, Mr. Clerk, Mr. Gravener, and two troopers and others, continued till past eleven at night, and so returned to the aforesaid place, and sat up till past three in the morning. This I do assert, was the company that the said Mr. Anthony Farmer kept, and these were the unseasonable hours. In witness whereof I am ready to swear, whenever a subpoena shall be sent to me.

GEORGE MORTIMER.

10. "Mrs. Mortimer is ready to assert, That when Mr. Anthony Farmer returned to the Lobster about eleven at night, he came much concerned in drink, and was for kissing the said Mrs. Mortimer, which, he being a stranger, she permitted him to do; but in doing of it, he the said Mr. Anthony Farmer put his tongue in her mouth, which was such a rudeness, that she immediately went out of his company, and would not come nigh him any more.

MARTHA MORTIMER.

11. "Being in company with William Hopkins of Abington, the 12th of June last, 1687, I heard him declare, That himself, with one Mr. Farmer, of the University of Oxon, and some others, did in a frolick, at an unseasonable time of night, take away the town stocks from the place where they constantly stood, and carried them in a cart a considerable way, and threw them into a pool, commonly called Mad Hall's pool.

CHARLES PEACOCK."

Some Clauses of particular Statutes to which the Case relates.

In their Statutes concerning their Election of a President, his character is thus described: That he must be a man of good reputation, and good life, and circumspect both in spiritual and temporal affairs.

In the same statutes the Oath which every fellow is obliged to take before he can give his vote in the nomination of a president, is this: viz. 'That he will name one or two of St. Mary-Magdalen-College, or of those who have been fellows there, or have left their places upon a legal and credible account: Or that he will name one or two of the fellows of St. Mary-Winchester College, commonly called New-College in Oxon, or of those who have been formerly fellows there, and have left their places upon a credible account.' After this, the thirteen senior fellows swear, 'That out of the two thus nominated, they will, with all speed, elect one to exercise the office of a president, whom in their consciences they think most proper and sufficient, most discreet, most useful, and best qualified for it, either without any regard to love, hatred, favour, fear, &c. as in the fore-mentioned Statute is more largely expressed.'

Part of the Oath which every Fellow takes when admitted.

Item. I do swear, that I will not procure any dispensation contrary to my aforesaid oath, or to any part thereof, nor contrary to the statutes and ordinances to which they relate, or any one of them; nor will I endeavour that such dispensations be procured by any other or others, publickly or privately, directly or indirectly: and if it shall happen that any dispensation of this sort shall be procured, or freely granted or obtained, of what authority soever it be, whether in general or particular, under what form of words soever it be granted, I will

neither make use of it, nor in any sort consent thereto. So help me God.

A Copy of Dr. Hough's Deprivation, by his Majesty's Commissioners for Ecclesiastical Affairs, &c.

Whereas it appears to us, that Mr. John Hough, B. D. hath been unduly elected president of St. Mary-Magdalen College, in the University of Oxon: we have thought fit, upon mature consideration thereof, that the said election be declared void, and the said Mr. John Hough be amoved from the said presidentship; and accordingly we do hereby declare and decree, that the said election is void; and do amove the said Mr. John Hough from the place of president of the said college. Given under our Seal this 22d day of June, 1687.

A Copy of Dr. Aldworth's and Dr. Fairfax's Suspension.

Whereas Charles Aldworth, doctor of Laws, vice-president of St. Mary-Magdalen College, Oxon, and the deputies, fellows of the same House, have been convened before us, for their contempt in not obeying his majesty's letters mandatory for electing and admitting Mr. Anthony Farmer president of the said College; and the said Dr. Aldworth and Deputies having been heard thereupon, we have thought fit to declare, pronounce, and decree, That the said Dr. Aldworth shall for the said contempt be suspended from being vice-president of the said college: and that Henry Fairfax Doctor of Divinity, one of the fellows of the said College, shall for the said contempt be suspended from his fellowship; and accordingly we do hereby suspend Dr. Charles Aldworth from being Vice-president of the said college, and the said Dr. Henry Fairfax from his fellowship in the said College. Given under our Seal the 22d day of June, 1687.

A Copy of the King's Inhibition to Magdalen-College.

'JAMES R. Trusty and well-beloved, we greet you well: Whereas we are informed, That a sentence or decree lately made by our commissioners for ecclesiastical affairs, touching an election in that our college, hath not been obeyed, our will and pleasure is, that no election or admission be made of any person or persons whatsoever, into any fellowship, demyship, or other place or office in our said college, till we shall signify our further pleasure, any statute, custom, or constitution to the contrary notwithstanding. And so, expecting obedience herein, we bid you farewell.'

Given at our court at Windsor, the 18th of July 1687, in the 3rd year of our reign.

By his Majesty's command, SUNDERLAND.

A Copy of his Majesty's Mandate for the Bishop of Oxon to be President.

'JAMES R. Trusty and well-beloved, we greet you well. Whereas the place of Pre-

'sident of our college of St. Mary-Magdalen is now void, our will and pleasure is, and we do hereby authorise and require you forth-with upon receipt hereof, to admit the right reverend father in God, Samuel lord bishop of Oxon into the said place of president, to hold and enjoy the same, with all the rights, privileges and profits, emoluments and advantages thereunto belonging, any statute or statutes, custom or constitution, to the contrary, in any wise, notwithstanding, where-with we are graciously pleased, and do accordingly hereby dispense in his behalf: And so expecting your ready obedience herein, we bid you farewell.'

Given at our Court at Windsor, August 14th, 1687, in the 3rd year of our reign.

By his Majesty's command, SUNDERLAND.

A Copy of the Lord Sunderland's Letter to the Senior Fellow, Dr. Pudsey, of St. Mary-Magdalen College in the University of Oxon, or in his absence, to the Senior Fellow residing there.

The king having been pleased by his letters mandatory, to require the fellows of St. Mary-Magdalen college, to admit the lord bishop of Oxon president of that college; his majesty commands me to let you know, That immediately upon the receipt hereof, he would have you assemble the fellows, and communicate to them his majesty's said letters: And I am further commanded to tell you, That his majesty expects a ready obedience to be paid to his pleasure herein. I desire you would send me an account of your proceedings as soon as you can, that I may acquaint his majesty therewith. I am, yours, SUNDERLAND.

A Copy of the Bishop of Oxon's Letter to the Senior Fellow of St. Mary-Magdalen College in Oxon, or in his absence to the Senior Fellow residing there.

Sir; You will receive herewith his majesty's mandate to admit me president of your college of St. Mary-Magdalen in Oxon, together with a letter of my lord Sunderland's, pursuant to his majesty's commands. I am indisposed, as I have been for some time, and not in a condition as yet to travel; and therefore my request to you is, That upon receipt of the king's pleasure, you would do me the favour to admit me by proxy (i. e.) either the next senior fellow under yourself, resident, or either of my chaplains, Mr. William Wickens or Mr. Thomas Collins, whom I depute in my stead, which is as valid in law, as if I were present myself; and is the most usual and customary practice. And by so doing, you will oblige, Your very loving friend, and brother, SAMUEL OXON.

Oxon, September 4, 1687.

The lord Sunderland sent an Order to the fellows of St. Mary-Magdalen college to at-

tend the king at Christ-church, at three in the afternoon. They attended accordingly.*

King. What is your name? Are you Dr. Pudsey?

Dr. Puds. Yes, may it please your majesty.

King. Did you receive my letter?

Dr. Puds. Yes, Sir, we did.

King. Then you have not dealt with me like gentlemen; you have done very uncivilly by me, and undutifully.

Here they all kneeled, and Dr. Pudsey offered a Petition, which his Majesty refused to receive; and said,

King. Ye have been a stubborn turbulent

* Reresby, who more than once adverts to king James's policy of attempting to create divisions among the different descriptions of Protestants in order to advance Popery, says of this case:

"The president of Magdalen college, in Oxford, being dead, the king sent them his Mandamus, requiring them to chuse the bishop of that city in his stead, but they answered 'Locus plenus est.' The king taking Oxford in his progress, and the master and fellows of that college waiting on him, he told them the people of the church of England had used him ill, that they had behaved neither as gentlemen or good subjects, and ordered them to go presently back to their election and chuse the bishop, or he would let them feel how heavy a hand a king had. They went, but returned this answer, That they were sorry they should be so unfortunate as to fall under his majesty's displeasure; but that they could not proceed to a new choice without actual commission of wilful perjury, and thereupon hoped he would excuse them. Now, in this progress, it was an observation generally made, that the king courted the dissenters, and discountenanced the church of England: for the Papists being by no means a body of themselves numerous enough to cope with the national church, he thought to strengthen them by a junction with the dissenters, whom he blinded with his liberty of conscience, and with telling them that he desired a repeal of the test and penal laws, for their ease and security, as much as in behalf of the Papists.

"A strange look it had, that the very people, who had lately been so indefatigably busy to divest him of his right, and even to deprive him of life, it having been, in one parliament, attempted to impeach him of high treason, upon the statute against a reconciliation with the church of Rome, I say it looked strange, that these very men should be preferred to those who had preserved him out of their hands, not in parliament only, but in the field also; but it seems all considerations are of no worth or validity with a hearty zeal for the priesthood of Rome, and that oblivion is so far from being ingratitude, that it is highly to be commended, a most salutary expedient, when for the advantage of mother church."

College; I have known you to be so these six and twenty years. You have affronted me in this. Is this your Church of England loyalty? One would wonder to find so many Church of England men in such a business! Go home, and shew yourselves good members of the Church of England. Get you gone; know I am your king. I will be obeyed, and I command you to be gone. Go and admit the bishop of Oxon head, principal, what do you call it, of the College—[One who stood by, said President] I mean President of the College. Let them that refuse it look to it; they shall feel the weight of their sovereign's displeasure.

The Fellows going out of the Lodgings, were called back.

King. I hear you have admitted a fellow of the College, since you received my inhibition. Is this true? Have you not admitted Mr. Holden fellow?

Dr. Puds. I think he was admitted fellow. But we conceive—

Mr. Cra. May it please your majesty, there was no new election, or admission, since your majesty's inhibition, but only the consummation of a former election. They always elect to one year's probation, then the person elected is received or rejected for ever.

King. The consummation of a former election! it was downright disobedience; and it is a fresh aggravation. Get you gone home, I say again; go, get you gone, and immediately repair to your chapel, and elect the bishop of Oxon, or else you must expect to feel the weight of my hand—

The Fellows offered again their Petition on their knees.

King. Get you gone, I will receive nothing from you till you have obeyed me, and admitted the bishop of Oxon.

Upon which they went immediately to their Chapel. Dr. Pudsey proposing, Whether they would obey the King, and elect the bishop of Oxon? They answered in their turns, 'They were as ready to obey his majesty in all things that lay in their power, as any of the rest of his subjects. But the electing the bishop of Oxon being directly contrary to their Statutes, and the positive Oaths they had taken, they could not apprehend it in their power to obey him in this matter.'

A Copy of the Petition offered at Oxford, September 4th, 1687.

To the King's most Excellent Majesty, &c.

Humbly sheweth;

That upon the 27th of August we received your majesty's letters mandatory, dated August 14th, requiring us to admit the right reverend father in God Samuel lord bishop of Oxon to be our president; and dispensing with all statutes and constitutions to the contrary. It is an unexpressible affliction to us, to find our-

selves reduced to such an extremity, that either we must disobey your majesty's royal command, contrary to our own inclinations, and that constant course of loyalty which we have shewed in all instances hitherto upon all occasions whatsoever, or else break our Founder's Statutes, and deliberately perjure ourselves.

For our Founder hath obliged us under oath, when we came in fellows, inviolably to observe his statutes; and one clause therein enjoins us never to admit or make use of a dispensation granted by any authority whatsoever, whereby we may be absolved from the same. In this statute for the election of a president, he commands us upon oath to elect such a person into the place of president within fifteen days after the vacancy, who either is, or has been fellow of our own, or New College: which we represented to your majesty in our humble Petition, signed April 9th, wherein we offered ourselves ready to elect any person capable of the same, who your majesty should be pleased to recommend; and having waited the utmost time limited by our statutes, and received no answer to that effect, we did then, according to the exigence of our statutes (having first taken the holy Eucharist, and our several oaths to that purpose) nominate and elect such a person as we in our consciences did believe to be every way qualified for the place. By which act of ours we have conveyed all that right to him which our Founder hath entrusted us with, and it does not lie in our power to admit any other. Our Founder in another statute obligeth us, under the pain of perjury, a dreadful anathema, and eternal damnation, not to suffer any of his statutes to be altered, infringed, or dispensed with, and commands us under the same sacred obligations, not to execute any orders or decree whatsoever, contrary or repugnant to the said statutes; by which said statutes and oaths, we are utterly incapacitated to admit the said reverend father in God to be our president.

May it please your sacred majesty, to give us leave to lay this our case, and ourselves, with all submission, at your royal feet, most earnestly beseeching your sacred majesty, to extend to us your humble petitioners, that grace and tenderness which your majesty hath vouchsafed to all your other subjects, and not to believe us guilty of any obstinacy or undutifulness, crimes which our souls abhor; but to receive us into your majesty's grace and favour, the greatest temporal blessing which our hearts can wish.

And your humble Petitioners shall always, as in duty bound, pray to Almighty God, to bless your Majesty with a long and happy reign over us, and afterwards to receive you to an immortal crown of Glory.

A Copy of the Address which the Fellows of St. Mary Magdalen College gave to the Lord President of the Council, Sept. 6, 1687; and which was delivered his Majesty at Bath.

We your majesty's most humble and most

dutiful subjects, the fellows of St. Mary Magdalen College in Oxon, being deeply afflicted with the late sense of your majesty's heavy displeasure, grounded, as we in all reason humbly presume, upon a most unkind misrepresentation of our actions, in relation to an election of a president into your majesty's said college; do humbly beg leave to prostrate ourselves at your royal feet, offering all real testimonies of duty and loyalty. And as we have never failed to evidence both our principles and practices to be truly loyal, in obedience to the commands of your royal brother, and your sacred self, in matters of the like nature; so whatsoever way your majesty shall be pleased to try our readiness to obey your royal pleasure in any instance that does not interfere with, and violate our consciences, which your majesty is studious to preserve, we shall most gladly and effectually comply therewith; a stubborn and a groundless resistance of your royal will and pleasure, in the present, and all other cases, being that which our souls eternally abhor, as becomes

Your Majesty's most loyal and most obedient Subjects, &c.

A Copy of a Letter directed to Dr. Bayly, Fellow of Magdalen College, Oxon, supposed to be writ by Mr. William Penn.

Sir;—Upon an inquiry made of your present fellows of Magdalen College, I am informed that you are a person eminent in that learned body, for your temper, prudence, and good conduct in affairs; and therefore very fit to be addressed to by me, who do not send you this to trepan you and your brethren, but out of a passionate concern for your interest, to persuade you either to a compliance with his majesty's letters mandatory, or to think among yourselves of some expedient to prevent the ruin of your college, and yourselves: And to offer it to his majesty's royal consideration, that the order for the *Quo Warranto* against the college may be recalled, before it be too late; for you cannot but be sensible how highly his majesty is incensed against you, neither can you give one instance whether ever that sort of proceeding was judged against the crown. Your cause most think it very hard; but you are not in prudence to rely on the goodness of your cause; but to do what the present instant of affairs will permit, and in patience to expect a season that will be more auspicious to persons of your character. Every mechanic knows the temper of his present majesty, who never will receive a baffle in any thing that he heartily espouseth; and that he doth this, yourselves have had too late and manifest an instance, to doubt of his zeal in the affair.

Where there are so many statutes to be observed, it is impossible but some must be broken at one time or another; and I am informed by the learned of the law, that a failure in any one point, forfeits your grant, and lays your college open to the royal disposal.

I could give many other prudent arguments that might possibly incline you to a speedy endeavour of putting an end to your troubles, almost at any rate; but I shall suggest this one thing to you, that your fatal overthrow would be a fair beginning of so much aimed at reformation, first of the university, then of the church, and administer such an opportunity to the enemy, as may not perhaps occur in his majesty's reign.

Your affectionate servant, &c.

The Answer to the afore-mentioned written Letter, dated Oct. 3, 1687.

The enclosed paper is a copy of a letter, which, by the charitable purpose of it, seems to be writ by you, who have been already so kind as to appear on our behalf, and are reported by all that know you to employ much of your time in doing good to mankind, and using your credit with his majesty, to undeceive him in any wrong impressions given him of his conscientious subjects, and where his justice and goodness have been thereby abused, to reconcile the persons injured to his majesty's favour, and secure them by it from oppression and prejudice. In this confidence, I presume to make this application to you, desiring your excuse for not subscribing it: For if you did write the letter, you know to whom it was directed: and if you did not, I hope your charity will induce you to make such use of your light you have by it into the affairs of our college, as to mediate for us with his majesty, to be restored to his good opinion, as the only thing which is desired by us, who are zealous, above all earthly things, for his felicity and glory.

We are not conscious of ever giving his majesty any just offence, as it will appear with you, when you shall have perused the enclosed papers; and have therefore no reason to fear the issuing out of a *quo warranto* against us. And though you are pleased to apprehend it, no instance can be given of a judgment against the crown, upon the process of that writ: the learned in the law tell me, there is nothing more common, and whereof many cases are reported by Kellaway, from page 128, to page 152, of his Book of Reports: and I think I have heard of a Case in Coke's ninth Report of the abbess of Prata Marcella, which evinces the same; wherein also there is a recital of judgment given against Roger Mortimer for the king, upon a *quo warranto* in Court of Eyre, reversed for Error in the King's-Bench. We hope, though we have many statutes, it will be found that we have not wilfully transgressed any of them; for all our present troubles are derived to us from our adherence to them, and our fear to offend God, and blemish our consciences, by departing from them.

His majesty is intentionally righteous and just in all his proceedings; he will never knowingly invade any man's property, as he was solemnly pleased to declare in his excellent Speech made in Council, on the 6th of

February, 1684, at his accession to the government; which is again repeated in his gracious Declaration for Liberty of Conscience, of the 4th of April last past. It is upon his sacred, inviolable, and royal word and promise, we must depend; not doubting but when his majesty shall be rightly informed of our case, in reference to both his mandatory letters to our College, his anger towards us will be totally extinguished. Our compliance to the first (which was Mr. Farmer's election) would have involved us in the guilt of manifest perjury, and the wilful violation of our statutes: and we are confident his majesty would never have granted the second on the behalf of my lord bishop of Oxon, if he had known we were then possessed of a President duly elected according to our statutes, and confirmed by the bishop of Winton,* our Visitor (as the statutes require); and if he is thereby invested with a lay-freehold under the protection of his majesty's laws, which we cannot undo, or attempt to invade, without subjecting ourselves to suits at law, and doing an apparent injury to the President, who doth not conceive himself to be affected with the sentence of the Lords Commissioners (to which he was no party) whereby his place is declared void, without any citations, summons, or hearing of him.

I believe no instance can be given of a Quo Warranto brought against a college or hall in the universities, from the first foundation of them to this day, or any other ecclesiastical corporation: for the abuses of some constitutions of franchises in them, and the misdemeanours of particular persons, will not destroy a college: and if the corporation of a college should be dissolved, the revenues thereof will return to the founder's heirs, and not devolve to the crown. And if our college must be the first example of that kind, we shall be better justified by the strict observation of our statutes (at least to God and our own consciences) than we could have been by a voluntary and deliberate breach of them.

It was loyalty and conscience, that, in the reign of king Charles I. made thirty-four of our forty fellows, and most of the scholars of our foundation, rather quit their places, and

* "Peter Mews, bishop of Winchester, who had borne arms for Charles 1, in the civil war, acted once more in a military character against the rebels in the west, under the command of the duke of Monmouth. After the prince and princess of Denmark had deserted the king, and was in the utmost perplexity and distress, not being able to distinguish his friends from his foes, he was inclined to put himself into the hands of the archbishop of Canterbury, or the bishop of Winchester. He accordingly sent a certain lady, in whom he could confide, to these prelates, to know if they would receive and secure him; but they neither accepted nor rejected the motion." 4 Granger, p. 235.

See, also, more of him in the third volume of Granger, p. 237.

embrace misery and ruin, than to submit to the government of the usurpers of the crown. And in Monmouth's rebellion, the same inducements prevailed on us to raise a company at our own charges, under the command of one of our Fellows, to engage against him. And we hope that these, and many other the like instances, which may be given of the loyalty and zeal of our society to the royal family, will be received as evidences thereof, and that our good and gracious sovereign will not exclude us from that liberty of conscience which he was pleased to extend to all his subjects.

Sir, I am your most affectionate Servant.

Some QUERIES sent to the Fellows of Magdalen College from Windsor, September 15, 1687.

1st. Whether, waving your election of the bishop of Oxon, you cannot, without violence to your conscience, signify to his majesty, or the above reverend bishop, your willingness to admit the lord bishop president of your college?

2ndly, Whether it be not more interest to the Protestant religion, to have a suspected Popish President, than to have all the places of the college refilled by the king's sole authority, with Popish novices and priests?

3dly, Whether you are not under a mistake, in thinking you should render yourselves more acceptable to the Protestant nobility and gentry, by your being turned out of your Fellowships by injustice and violence, as you conceive; or rather will they be not very cautious how they receive you into their families, for fear of giving offence?

4thly, Whether his majesty, as supreme Visitor of the university, cannot place or displace there *ad libitum*? or whether you have a right notion of the proceedings which have been practised against you? Whether you suppose that the Lords Commissioners proceeded against you as Lords Commissioners, or Visitors? Which notion, I am sure, will overthrow some body's plea and exception against their authority.

5thly, Whether you acted like men skilled in business, when you refused Mr. Penn's mediation, who you may be sure had good authority for what he did? You could not but know that man, and therefore must needs be fore-armed against any wiles that could be offered to you. Whether an unanimous subscription for an expedient (which indeed I think you ought not to refuse in good manners, since the king was pleased to propose it) presented to his majesty by Mr. Penn, or another favourite, would prevent the destruction of the best foundation in Europe?

Lastly, Whether you be not drawn beyond your knowledge by some hot-headed advisers, which never consider the present state of his majesty's Court of Justice? *

* See Mr. Serjeant Heywood's account of the Judges inserted in a Note to the Trial of the Seven Bishops.

An ANSWER to several QUERIES to the Vice-President and Fellows of Magdalen College in Oxon, sent from Windsor, dated the 25th of September, 1687.

To the 1st, We cannot, without violence to our consciences, and deliberate perjury, admit any person to be President of our College, that is not elected thereunto, and qualified according to our statutes; whereby the bishop of Oxon is in no sort capable; nor is there any memorial in all our register of any admission of a President without election, but of one Dr. Nicholas Bond, whose case was as followeth; viz. Upon the death of Dr. Lawrence Humphreys, about the 30th or 32d of queen Elizabeth's reign, the queen recommended Dr. Bond (being a Fellow of our college) to be elected President. Many of the Fellows inclined in their judgment to elect one Smith, (another of the Fellows) and at their meeting for election, the contention was so great, that they rose without electing, and the obstinacy continued till the place became lapsed: and there being no provision in our statutes to direct us what to do in such a case, the queen, by her letters patents, constituted the said Dr. Bond to be President; and therein declared, That her majesty being informed that the Fellows had neglected to make election of a President in due time (as their statutes required) and those statutes having made no provision for such an omission, she, out of her princely care for the place, and indulgence for those persons who had been guilty of that neglect, did, by advice of the bishop of Winton, their Visitor, constitute Dr. Bond their President; with protestation nevertheless, that she did not thereby pretend to supersede their statutes, or invade their right of election, which was thereby invested in them, but took this course as the only means left to supply their defect of election.

To the second. We must not make ourselves guilty of deliberate perjury, for any considerations whatsoever, both in respect to our consciences, and that we may not, by such a breach upon our statutes, expose our constitution to a forfeiture, nor do evil that good may come on it.

To the third. We conceive we shall be more acceptable to all good men for acting honestly according to our consciences, than for voluntarily and unjustly departing from our right.

To the fourth. We pretend not to make it a question, whether his majesty, by his authority royal, as supreme visitor, can grant a commission for visitation of any college that has a local visitor by their statutes, and are not royal foundations: But we are advised, that no commission can be granted under the great-seal to visitors, to place and displace members of colleges (whose places are freeholds) *ad libitum* or *discretum*; but they must proceed according to legal discretion, that is, by the laws and statutes of the land, and the local statutes of the college: And places concerned for the headships and fellowships of colleges, are temporal posses-

sions, and cannot be impeached by summary proceedings. One Dr. Thomas Loveney, president of our college, was deprived in queen Elizabeth's time, by the bishop of Winton, the legal visitor thereof, established by royal authority, and he appealed to the queen: But by the advice of all the judges it was held, that the queen, by her authority, as supreme visitor, could not meddle in it, but he must bring Westminster-hall, because deprivation was a cause merely temporal. The king has a great authority spiritual as well as temporal; but no commissioners can be authorized by the crown to proceed in any commission under the great seal or otherwise, but according to law; in spiritual causes by the canon law; in temporal by the other laws and statutes of the land. And wherein the proceedings in some commissions are directed to be 'summarie et de plano &c.' those words are to be applied to shorten the forms of process, and not for matter of judgment: For Magna Charta provides for our spiritual liberties, as well as our temporal.

An ACCOUNT of the VISITATION of St. Mary Magdalen college in Oxon.

On October 19, Mr. Atterbury, the king's messenger, fixed a citation on the college and chapel-doors, requiring the pretended president and fellows, and other members of the college to appear before the lords commissioners, * bishop of Chester, lord chief justice

* This seems to be the subaltern commission which Burnet mentions to have been "sent from the Ecclesiastical Commission to finish the matter." According to Hume's representation [vol. 8, p. 265, edit. of 1807], it appears as if the whole proceedings had been before an inferior commission, which certainly was not the case.

The Ecclesiastical Commission is printed in bishop Compton's Case, vol. 11, p. 1143.

Roger Coke says, that the Commission of Ecclesiastical Affairs "was granted in the beginning of the year 1686, but was not opened to act till the third of August following: why it lay so long dormant," continues he, "I do not find; but only guess that the king might the better settle his dispensing power in the country, by such judges as he had made, as well as in Westminster-hall; and that he might be more at leisure to carry on the design for surrender of charters." And he tells us, not perhaps without some liability to ridicule, "how unwarily the commission was drawn: for though," he proceeds, "I believe every one understands the design of this commission was to introduce a Roman Hierarchy, which assumes a power over the temporal in order to the spiritual good: yet here this commission grants the temporal power (viz. the chancellor and any other two, viz. my lord treasurer, president, or chief justice), a power of excommunication, which is a pure spiritual act."

Wright, and Mr. Baron Jenner, in the chapel, at nine of the clock on Friday morning, Nov. 21.

On Thursday the lords commissioners came to Oxon, attended with three troops of horse, which quarter there.

On Friday morning at nine they went into the chapel: The president and fellows thinking they had designed to sit in the choir, made no preparation of seats in the outward chapel: Upon which their lordships adjourned to the Hall, where their commission was then read, which, in general, was the same with the former: These three being added to the other lords commissioners, and particularly impowered to visit Magdalen-college only.

This done, the names of the president and fellows were called over; Dr. Hough being first called. All in town appeared (except Dr. Fairfax) and excuses were made for the absent.

Then a speech was made by the bishop of Chester,* and in it his lordship was severe

* This Bishop of Chester was Dr. Thomas Cartwright, the same, I apprehend, who had attended Walcot, Rouse, and Hone, (and according to Luttrell's account, the duke of Monmouth) at their executions, and was author of the sermon mentioned by Fountainhall (*Decisions*, vol. 1, p. 416,) "that the king could dispense with the laws in cases of necessity, whereof he was the sole judge."

I find concerning him the two following passages in Narcissus Luttrell's MS. "*Brief Historical Relation*," &c. in All-Souls College, Oxford:

"February, 1688. The bishop of Chester, in a drunken humour, having spoke reflecting words on the lord chancellor and lord Sunderland, that they would deceive the king, received a check for the same.

"April 23, 1689. The Irish letters say, that the bishop of Chester died lately there, not without suspicion of poison."

In Granger's *Biog. Hist.* vol. 4, p. 294, is the following character of Cartwright:

"Thomas Cartwright, who had been a forward and confident preacher at the time of the Interregnum, and proceeded in exact conformity with the powers then in being, struck in with the royal party at the Restoration, and was no less forward upon all occasions to express his loyalty. He was made one of the king's chaplains; was successively a prebendary of St. Paul's, and of Durham, and had a hard struggle with Dr. Womack, for the bishopric of St. David's. In the reign of James, he enlisted himself on the side of the prerogative, and was made bishop of Chester for boldly asserting in one of his sermons, that the king's promises to his parliament were not binding. It is probable, that on such slavish terms he might have been made archbishop of Canterbury, if that prince had continued on the throne. He sat in the Ecclesiastical Com-

mission, and was one of the judges sent by the king to intimidate the fellows of Magdalen college in Oxford, in the affair of Dr. Parker, whom they had refused to elect their president, according to the royal mandate. Upon the Revolution he fled into France, where he officiated as minister to the protestant part of the king's household. Upon the death of Seth Ward, he became titular bishop of Salisbury. James, who looked upon him as neither protestant nor papist, had little or no esteem for him. He died of the flux in Ireland, whither he had followed the royal adventurer, the 15th of April, 1689. He is misrepresented in Richardson's "*Godwin*," as having publicly professed the faith of the church of Rome. See the contrary, in "*Athen. Oxon.*" ii. col. 830."

The Court was then adjourned till two in the afternoon.

In the Afternoon were called over the names of the Demies, Chaplains, Clerks, Choristers, and College servants.

The *President* then interposed, desiring leave to speak before they proceeded any farther; which being granted, he told their lordships, that the time betwixt your citation and appearance was so short, that the society had not time to advise with counsel how to behave themselves on this occasion; therefore desired of your lordships a copy of the commission, and time to consider of it.

Bishop Ch. It is upon record; you may have it above.

mission, and was one of the judges sent by the king to intimidate the fellows of Magdalen college in Oxford, in the affair of Dr. Parker, whom they had refused to elect their president, according to the royal mandate. Upon the Revolution he fled into France, where he officiated as minister to the protestant part of the king's household. Upon the death of Seth Ward, he became titular bishop of Salisbury. James, who looked upon him as neither protestant nor papist, had little or no esteem for him. He died of the flux in Ireland, whither he had followed the royal adventurer, the 15th of April, 1689. He is misrepresented in Richardson's "*Godwin*," as having publicly professed the faith of the church of Rome. See the contrary, in "*Athen. Oxon.*" ii. col. 830."

Pres. Is it the same the other lords commissioners had?

Bishop Ch. Yes, for the most part it is.

Pres. Then, my lord, I do assure you (and will make oath, if you please) that I have often endeavoured to get a copy of it, and could not procure it.

L. C. J. Have you not heard it read, or will you hear it again?

Pres. I am not capable of making a judgment of it myself; but it is possible there may be errors and defects in it, such as the society may make use of to their own advantage; and I am confident, it is neither his majesty's intention, nor your lordships', we should be debarred from it.

A Copy was then denied.

Bishop Ch. Dr. Hough, will you submit to this visitation?

Pres. My lords, I do declare here in the name of myself, and the greater part of the fellows, that we submit to the visitation, as far as it is consistent with the laws of the land, and the statutes of the college, and no further. I desire your lordships that it may be recorded.

This was twice repeated.

L. C. J. You cannot imagine that we act contrary to the laws of the land; and as to the statutes, the king has dispensed with them: do you think we come here to act against laws?

Pres. It does not become me, my lords, to say so; but I will be plain with your lordships. I find that your commission gives you authority to change and alter the statutes, and make new ones as you think fit: now my lords, we have an Oath, not only to observe these Statutes [laying his hand on the book] but to admit of no new ones, or alterations in these: This must be my behaviour here; I must admit of no alteration from it, and by the grace of God never will.

Bishop Ch. Do you observe all these statutes?—*Pres.* Yes, my lord, I hope we do.

Bishop Ch. You have a statute there for Mass, why don't you read Mass?

Pres. My lord, the matter of this oath is unlawful; and in such a case no man is obliged to observe an oath: besides, the statute is taken away by the laws of the land.

Bishop Ch. By what law?

Dr. Stafford. By that which obliges to say Common-Prayer.

Bishop Ch. What, the Act of Uniformity? I have often considered it, and don't remember one word of mass in it.

Dr. Stafford. But that obliges us to use the liturgy of the Church of England in all collegiate churches and chapels. And, I hope, my lords, you do not imagine that we can say Common-Prayer and mass together.

Bishop Ch. Do you allow that act of parliament can free you from the obligation of a statute?

Pres. I do not say but that his majesty may

alter our statutes, nor do I know but a parliament may do the same; I dispute not their power; only this, my lord, I say, that I, who already have taken an oath to observe these statutes as they now stand, and am sworn not to admit of any change or alteration by any authority whatsoever [And then turning to the Oath, where they were to observe those statutes and no other, according to the literal and grammatical sense, &c. and reading it to their lordships] can obey none: but then those who come after such limitations and restrictions are made, are not obliged to observe them: and that, my lords, is our case, as to the statutes of the Mass.

Then the Decree of the 22d of June was read, declaring the President's election null and void.

Bishop Ch. Did you know of this commission, &c.?

Pres. Yes, my lord, I have heard of it.

Bishop Ch. Why then did you not obey it?

Pres. I was never cited before their lordships, nor was either heard by them in person or proxy; and I think I am the only instance that is extant, of any man that was ever deprived of a freehold, wherein he was legally invested, and of which he was quietly possessed, without being summoned or heard.

Here mention was made of Dr. Fairfax's suspension.

Pres. My lord, he is absent, and if your lordships give me leave, I have somewhat to say on his account. Your lordships may please to observe in that decree, that the reason given why Dr. Fairfax was suspended from his fellowship, was, because he had not obeyed his majesty's command, in not electing Mr. Anthony Farmer president of the college: now, the charge of immorality given in against Mr. Farmer by the college-delegates was made out, and their lordships fully satisfied in it, on the 29th of July; notwithstanding which, this decree for suspension of Dr. Fairfax was fixed on the college-gates August 2.

Bishop Ch. The king hath for the most part recommended to the Presidentship of this college.

Pres. I am the twentieth president, and only four of that number have been recommended by the kings and queens of England, whereof three were every way qualified for that office.

Bishop Ch. Who were those?

Pres. My lord, there was one in the time of Edward 6. one in queen Elizabeth's, and two in the late king's reign.

Bishop Ch. Was there never a one in king Charles the first's reign?

Pres. Not that we know of.

Bishop Ch. What think you of Dr. Oliver?

Pres. It doth not appear to us, my lord, that he ever had a mandate.

Bishop Ch. But it appears to us, and that I will bring you one to swear, that he had a mandate.

Pres. The truth is, we have lost the regis-

ter of Dr. Oliver's election and admission; the register betwixt the year 1640, or thereabouts, and 1660, being taken away by those who were turned out of the college at that time; but I believe, my lord, we are able to prove that he was elected and admitted according to the statute.

Bishop Ch. Was Dr. Clark a statutable person?—Pres. Yes, my lord.

Bishop Ch. Do not the statutes require that he should be in orders? was he in orders?

Pres. My lord, the statutes only require that he should be doctor of divinity, physic, law, or master of arts. There is indeed one statute, which says, The president or senior-fellow should read prayers upon such certain days; from whence we conclude, that the founder supposed we might have a president that might not be in orders; and in such a case he takes care that the senior-fellow should do his duty.

Mr. Char. My lord, will you be pleased to ask Dr. Hough, whether Dr. Clark was married, or not?

Pres. No, Sir, he was a widower.

Then a Petition was read from the society to his majesty, signed the 9th of April, and presented the 10th to the earl of Sunderland, by the hands of Dr. Thomas Smith, and captain Bagshaw, wherein it was set forth, That having heard that his majesty would recommend Mr. Farmer to them, a person incapable, they did humbly beseech him, either to leave them to a free election, or to recommend a qualified person.

Bishop Ch. Was this the petition?—Ans. Yes.

Bishop Ch. Why then did you not stay for his majesty's answer?

Pres. My lord, we did till the very last day wherein we are limited to finish the election; and my lord Sunderland returned in the king's name this answer, That his majesty expected to be obeyed. Now, my lord, we did no longer defer the election, because our statutes enjoin us within such a time, and we staid to the utmost: nor could we choose the person his majesty did recommend, knowing him to be so unfit, as we afterwards made him appear to be. The society was therefore to proceed to the election of another person, and did agree on such as you see.

Bishop Ch. A mandate always implies an inhibition.

Pres. My lord, I cannot conceive that.

Bishop Ch. But I can; and if you question it, here is the king's counsel ready to argue it.

Pres. My lord, whilst the person his majesty recommends appears duly qualified for the place, it seems indeed to imply that we should not proceed to the election of another; but when he is known to be utterly incapable, it seems to be the same as if there were no letter at all.

Some other things and questions less mate-

rial were put, and then the Court was adjourned to Saturday the 22nd, at nine in the morning, to the common room, the hall being, as they said, too public and incommodious.

Saturday, October 22, 1687.

As soon as their Lordships met in the common room, and the Society before them, the first word was 'Withdraw;' and after a little time, the President was called in alone.

Bishop Ch. Do you submit to the decree of the commissioners, whereby the election is declared null?

Pres. As to that decree of the lords above, it is a nullity in itself from the beginning to the end, as it relates to me, I never having been cited, nor having ever appeared before them, either in person or proxy. Besides, my cause itself was never before them; their lordships never enquiring or asking one question concerning the legality or statuteness of my election; for which reasons (as I am informed) that decree was of no validity against me, according to methods in the civil law: but if it were, I am possessed of a freehold, according to the laws of England, and the statutes of the society, having been elected as unanimously, and with as much formality as any one of my predecessors, presidents of this college, and afterwards admitted by the lord bishop of Winton, our visitor, as the statutes of the college require; and therefore I cannot submit to that Sentence, because I think I cannot be deprived of my freehold, but by course of law in Westminster-hall, or by being some ways incapacitated by the founder's statutes.

Bishop Ch. Will you deliver up the keys of the president's office, and lodgings, to the use of that person whom the king has appointed your president, as the statutes require?

Pres. I will immediately do it, if that appears.

Bishop Ch. Turn to that part of the president's oath, where he promiseth to submit quietly if he shall be expelled, either for his own fault, 'vel ob aliam causam.'

Pres. My lord, that statute only concerns me, if I am expelled for any fault committed by me.

Bishop Ch. 'Vel ob aliam causam?'

Pres. Then, my lord, to be short, here is no cause at all.

Bishop Ch. I ask you again, will you deliver up the keys to the president whom his majesty hath appointed?

Pres. There neither is, nor can be a president so long as I live, and obey the statutes of the college; and therefore I do not think fit to give up my right, the keys and lodgings.

Bishop Ch. We may demand them of you as visitors.

Pres. My lords, we never deliver up the keys to the bishop of Winton. and we own no greater visitatorial power than his: he hath the king's authority. It is by virtue of a royal charter that we live together, and enjoy the

benefit of this place, that empowered our founder to give us a rule, and obliged us by oath to act suitable unto it: And the bishop of Winton is hereby constituted to be our visitor; and all this we own from the king's authority. The bishop of Winton is our ordinary visitor; the king (I presume) our extraordinary. But your lordships know it hath been controverted, Whether the king can visit a private college or not? The authority of the President is made by delivering up the Statute-book, and Keys; and therefore I look upon them as an essential badge of my office. But I humbly beg that I may ask your lordship one question. Your lordship is pleased to demand of me to give up these things: does your lordship own my right? For if not, what is it your lordships would have me give up?

Bishop Ch. No, we look upon you as an intruder.

Pres. If I am an intruder, the bishop of Winton made me one; and I thank God for it. My lords, the time we have been allowed for this appearance has been very short; but one day betwixt it and the Citation. We are men ignorant in the laws, and I must confess it of myself in particular, that I have endeavoured to give your lordships a plain satisfactory reply to such questions as your lordships have been pleased to put to me. It is very probable, that through ignorance and inadvertency, I may express myself unwarily. If so, I beseech your lordship let no advantage be taken of it; my intention has been always to express myself with all imaginable duty to the king, and respects to your lordships. If I have done otherwise, I beseech your lordships' candour in a favourable interpretation of what I said, that nothing may be taken amiss, where all was dutifully intended. And now, my lords, thus far have I appeared before you as judges; I now address to you as men of honour, and gentlemen; I beseech you to represent me as dutiful to his majesty to the last degree, as I always will be, so far as my conscience permits me, to the last moment of my life; and when I am dispossessed here? I hope your lordships will intercede that I may no longer lie under his majesty's displeasure, or be frowned upon by my prince, which is the greatest affliction can befall me.

Upon this the President was ordered to withdraw, and after a little time, he and the Fellows were called in again. Then the Bishop repeated this question.

Bishop Ch. Dr. Hough, will you deliver up the keys, and quiet possession of the lodgings, to the person whom his majesty has appointed president? [To which no Answer was returned.] The Bishop repeated a second time.

Pres. My lords, I have neither seen nor heard any thing to induce me to it.

Bishop Ch. Dr. Hough, will you deliver up the keys, and quiet possession of the lodgings, to the person whom his majesty has appointed president?

VOL. XII.

Whereupon the King's Proctor stood up and accused Dr. Hough of Contumacy. Then the bishop of Chester admonished him in these words, three times.

Bishop Ch. Dr. Hough, I admonish you to depart peaceably out of the lodgings, and to act no longer as President, or pretended President of this College.

Which being so done, they struck his name out of the Book, and admonished the Fellows, and others of the Society, that they should no longer submit to his authority.

Oxon, Saturday, October 27, 1687.

Dr. Fairfax's Case before the Commissioners.

At the first sessions Dr. Fairfax purposely absented himself; but Mr. Atterbury making affidavit he was in town, and that he advised him to appear, the doctor accordingly did so the next day. The doctor being called in alone, and the doors immediately shut, he begged of their lordships some company might be let in, because, as all had observed, the Bishop in his speech, at the opening their commission, promised to transact every thing in the face of the world. The Bishop complained of the crowd. The doctor then desired to fetch in but two or three, at length but one, and him at the door, viz. the college steward, a public notary.

Bar. Jenner. You must not think to prescribe to the court.

Bish. Ch. What is the cause of your contempt, in not appearing at either sessions yesterday?

Dr. Fairfax. No contempt, my lord, but for the ensuing reasons. First, I thought my suspension above had eased me of that trouble. [The doctor tendering a copy of it, which was read by the Commissioners. The doctor insisted very much on the reasons their lordships at Whitehall gave for this suspension; viz. for not obeying his majesty in electing Mr. Farmer, he tendering a copy of articles made good against him; and yet their lordships ordered his suspension to be fixed on the college gates five days after that famous hearing. Second reason for his non appearance, that upon the first day of the ensuing term, he intended to meet the lord chief justice, at his court of King's Bench, for relief against the sentence, his fellowship being a freehold; witness Coveny's Case.]

Bish. Ch. You will find but little favour there.

Dr. Fairfax. My lord, in courts of judicature, I only expect justice (and turning to the lord chief justice) I have myself, said he, been above four years in all the courts of Westminster hall, and found excellent justice, and I will see how it is now.

L. C. J. You shall have justice.

Dr. Fairfax. But your lordship may save me the labour of two journies and my charges, by

D

improving your lordship's deserved interest with my lords commissioners there, and get them now to take off my suspension: It is ill travelling at this time of year; and besides I am not rich.

Bar. Jenner. To sue in Westminster hall requires a purse.

Dr. Fairf. My lord, I did not say I was poor.

L. C. J. You must make your supplication and submission to the king.

Dr. Fairf. My lord, they tell me, that this business lies in your lordship's court, and only there. Besides the trouble I am otherwise to give your lordship, what a noise will the cause make, that Dr. Fairfax is suspended for this very reason; viz. not obeying the king, in electing Anthony Farmer, such a virtuoso! And under correction, your lordships are obliged to take off my suspension, to take off the shame from that body, whose number by a common adjunct you yourself have lately increased.

Bar. Jenner. We must not endure these reflections on the court.

Bish. Ch. But will you submit to this visitation?

Then Dr. Fairfax read a Paper, subscribed by him, dated October the 22d, in these words:

'My lords, I have been summoned, and appeared in this cause before the Lords Ecclesiastical at Whitehall, with whom your lordships are now joined in commission; and then gave in my answer: I have nothing to add to it, and find no reason to retract it.'

'HENRY FAIRFAX.'

Bish. Ch. Will you admit of the Bishop of Oxford?

Dr. Fairf. I am suspended.

Bish. Ch. Have you done no collegiate act since your suspension?

Dr. Fairf. My lord, I have gone into the hall, and laid in my chamber: I did not think their lordships, when they suspended me, ever intended that I should not eat, drink, or sleep.

Bish. Ch. If your suspension was off, would you submit to the Bishop of Oxford?

Dr. Fairf. Truly, my lord, I cannot do it.

Then all the Fellows were called into court.

The President being withdrawn, the Bishop put the question to all the fellows; viz. Whether they would assist at the admission of the bishop of Oxford to be installed President, by virtue of the king's mandate? To which was answered by all the Fellows, to this effect (except Dr. Pudsey, and Dr. Thomas Smith, who answered doubtfully, and Charnock, that he would assist) That they were under oaths to the contrary, and therefore could not do it.

Then all were ordered to withdraw; and Dr. Pudsey being called in alone, they asked him concerning the manner and form of Installing a President; which he instructed them in.

The Court adjourned till two in the afternoon.

As soon as they met, a Letter from the earl of Sunderland to Dr. Pudsey was read, dated the 2d of August, signifying, that the society in answer to his majesty's Letter, commanding them to admit the bishop of Oxford, agreed unanimously in this Answer, That the place was full. Their lordships were pleased to ask the Fellows singly, whether that was their answer? And as many as were there, owned that it was.

During this examination, the President came into court, and having waited until it was ended, and their lordships at a pause, he made his application to them: 'My lords, if your lordships please to give me leave, I would gladly speak a few words.' They were all pleased to put off their hats, and say he might. Whereupon he said, 'My lords, you were pleased this morning, in pursuance to a decree of the lords commissioners at London, to deprive me of my place of president of this college, and to strike my name out of the Buttery book: I do hereby protest against all your proceedings, and against all that you have done, or hereafter shall do, in prejudice of me and my right, as illegal, unjust, and null; and therefore I appeal to my sovereign lord the king in his courts of justice.' Upon which, the strangers and young scholars in the room gave a hum; which so much incensed their lordships, that notwithstanding all the protestations the president and fellows could make, the president in particular offering to purge himself by oath, that he was no way accessory to, or abetting of it, and declared that he was heartily ashamed and troubled at it; yet the Lord Chief Justice was not to be pacified, but charging it upon the president, bound him in a bond of 1,000*l.* and security to the like value, to make his appearance, at the King's-bench bar, the 12th of November. At the same time baron Jenner took occasion to pun on the president (Hough's) name, saying to him, 'Sir, you must not think to huff us.'

After this, was read the Answer the fellows returned to his majesty upon his command to them, upon the 4th of September, to elect the bishop of Oxford: the answer was under the hand of a public notary, subscribed by all the fellows then present, except Mr. Charnock. The bishop of Chester was pleased to charge the fellows of unmannerliness, for sending such an answer to their prince after such a manner.

So they adjourned till Tuesday the 25th, at eight in the morning.

Tuesday, October 25, 1687.

When the court met, Dr. Stafford offered a paper in Answer to what was objected on Friday, that a mandate implied an inhibition; which their lordships having perused, would not suffer to be read publicly, but asked the fellows whether they would sign it, bidding them do it at their peril.

Then the fellows had leave to withdraw into the hall, and not being satisfied that it was ne-

cessary to sign a plea, which their lordships refused to have argued, they returned the paper into the court, subscribed only by Dr. Fairfax and Dr. Stafford. The latter, after some debate, desired to withdraw, but Dr. Fairfax stood to it.

A Copy of Dr. Stafford's and Dr. Fairfax's Plea.

"To the Right Reverend and Right Honourable his Majesty's Commissioners for the visiting St. Mary Magdalen College in Oxon.

"May it please your lordships;

"On Friday last in the afternoon you seemed to insist very much on this; viz. That his majesty in commanding the fellows of the said college to elect Mr. Farmer president, did thereby inhibit them to elect any other person whatsoever; which has not yet been made appear to be law either out of the books of civil, canon or common law: neither is it agreeable to reason, that a command to elect a person incapable, should include in it an obligation not to elect a person capable, that being a kind of contradiction *in terminis*. Yet this being granted, it cannot in the least affect the said fellows, or invalidate their election of Dr. Hough, notwithstanding his majesty's mandate in behalf of Mr. Farmer, who being incapable of the place, the fellows cannot be said to be guilty of any disobedience or disloyalty, in proceeding to the election of another person who was qualified according to the statute, being forced to make an election. For they are obliged by the statutes of their college (when called together) to elect a president, or any officer, under pain of perpetual expulsion from the college, to meet and make an election; which punishment they incur *ipso facto*, who either refuse to meet when so called, or being met, to nominate or elect a person into the office void, as appears by the statutes of the said college: 'Titulo de numero scholarium & electione præsidentis.' Now according to the founder's direction in the said statute, on the 15th of April last, the fellows were called together by the vice president to elect a president in the place of Dr. Clark deceased, and the oath desired to be taken, before the election was administered by the vice president to them, whereby they are obliged to nominate and elect a person that either is, or has been fellow of Magdalen college, or New college in Oxon. Which oath, when the fellows had taken, it was not in their power to elect Mr. Farmer; and yet they were then obliged to make an election, under pain of perpetual amotion from the college; as appeared by the forecited statute. And it cannot be imagined, that his most sacred majesty did expect that the fellows should be either perjured, or forfeit their right to their fellowships, rather than disobey his command; his majesty having most graciously declared, that conscience ought not to be forced, and that

none of his subjects should be molested in the enjoyment of their rights and privileges, &c. Now, that our proceedings at the election cannot lay any imputation of our disobedience or disloyalty upon us, will thus be made appear. Either we had the power to elect a president, or we had not; if we had not, to what end or purpose did his majesty command us to elect one? if we had, our power was either restrained to persons so and so qualified, or we were at liberty to choose whom we pleased: but we could not do the latter, as appears by our statutes; and therefore we could not elect Mr. Farmer, being not invested with any power to elect a person unqualified. And if we had so done, our election would have been null and void in itself, and the person elected liable to be turned out by our visitor.

"As for the decree of his majesty's commissioners (in pursuance of which your lordships have admonished Dr. Hough to recede from the place of president, and quietly to resign the keys of his office, and have his name struck out of the college book) we humbly conceive it to be null and void in itself, to all intents and purposes, Dr. Hough being thereby deprived of freehold for life (of which he was duly and legally possessed) without ever being called to defend his right, or any misdemeanor objected against him. Wherefore we humbly beg leave of your lordships, that Dr. Hough may be permitted to defend his right and title to the presidentship at common law, before any other person is put in possession of the place.

THOMAS STAFFORD,
HEN. FAIRFAX."

After this, Mr. Wiggins, chaplain to the bishop of Oxford, was called in, who delivered a Paper, empowering him, as proxy, to be installed president for his lord; which being read, together with the king's mandate for the bishop of Oxon, the question was put to two or three of the seniors, Whether they would assist at this instalment? Which they refusing, the court adjourned to the chapel, where the bishop of Chester put Mr. Wiggins into the president's stall, where he took the oath which the statutes enjoin the president at his admission, and the oaths of allegiance and supremacy; the latter of which he was ordered to take upon his knees, which he accordingly did. Then their lordships conducted him to the door of the president's lodgings, where knocking three times, and the door not being opened, they returned to the common room, and commissioned Atterbury, and a tipstaff, to fetch a smith to force it open; which was done, their lordships being present all this while: none of the fellows, except Mr. Charnock, assisting, or being so much as present at either of these performances. Then the commissioners being returned to the common room, Dr. Fairfax desired leave, at their leisures, to speak; which was granted.

Dr. Fairf. My lords, your lordships have been doing of what I can by no means consent to.

Bish. Ch. You are big to be delivered of your own destruction. Will you submit to the bishop of Oxon, as now installed president, by virtue of the king's mandate?

Dr. Fairf. I will not; I cannot; because we have a statutable and legal president already.

Then the same question was put to the society, which being a business of moment, they desired time till the afternoon to consider it.

Then the Court adjourned till three o'clock; at which time the answer was given in by the society (except Dr. Fairfax, who had given his in the morning) "That whereas his majesty hath been pleased, by his royal authority, to cause the right reverend father in God Samuel bishop of Oxon, to be installed president; we whose names are hereunto subscribed, do submit, as far as is lawful and agreeable to the statutes of the college, and no way prejudicial to the right and title of Dr. Hough."

This Answer was accepted, except the last clause, which the lord chief justice, and baron Jenner declared, as judges, to be insignificant, since nothing they could do, could any way invalidate Dr. Hough's title; but left them still at liberty to be witnesses for him, or any other way be serviceable to him in the recovery of his right. Upon this assurance, the society was prevailed with to leave out the last clause.

Then all were commanded to withdraw: And Dr. Fairfax being called in, the bishop asked him what he meant by his paper above-mentioned, dated October the 22d, and whether he did submit to the authority of the court?

Dr. Fairf. As I have denied it above, so I do here.

Then the court was opened, and the Doctor complained before them all, that he was twice closeted; and being asked, Whether he would obey the court, and bishop of Oxon? he plainly denied both. Upon which the Buttery book was called for, and the bishop of Chester commanded his name to be struck out, and this sentence passed; viz.

'Forasmuch as you have denied the authority of the court, and refused to obey the bishop of Oxon, whom the king hath made your president, and taken commons after your suspension; we declare your place void, and command you quietly to depart the college within 14 days.'

Dr. Fairf. My lords, all the huge calamities that have befallen me, are on the sole account of a religious and conscientious observation of our pious founder's statutes, whose bread I have eaten almost these 30 years.

L. C. J. No speeches: besides, if you have any papers, instead of reading them, leave them in the court.

Then, with much ado, the doctor prevailed with them to let him read his protestation, which he left in the court.

'I Henry Fairfax, fellow of St. Mary-Magdalen College, do under my former an-

'swer heretofore made, and to the intent it may appear that I have not consented, nor agreed to any thing done against me, and to my prejudice, I protest that your sentence given here against me, is *lex nulla*, and so far as it shall appear to be *aliqua*; I do say it is *iniqua et injusta*; and that therefore I do from it, as *iniqua et injusta*, appeal to our sovereign lord the king, in his courts of justice, as the laws, statutes, and ordinances of the land will permit in that behalf.

Subscribed,

HENRY FAIRFAX.'

October 25, 1687.

This Protestation was over-ruled, and a copy of the Sentence denied, though most earnestly desired at the instance of Dr. Hedges, and Mr. Vice-Chancellor, two days after.

At the close of the sessions, their lordships declared, that they were very well satisfied with the answer the society had given them; and though before they had laid a libel to their charge, yet that night they declared, they had met with nothing from them but civility, and that they should receive the same from them; that they had shewn themselves men of excellent tempers this day and before; and that they would represent it faithfully above to their advantage, and that if it any way lay in their power to serve them, they should be very ready to do it.

Then they adjourned till Wednesday morning, ordering them to bring in their answer to the following questions:

1. What gifts and provisions have you for entertainment of strangers?
2. What is the value of it?
3. How is it applied?
4. And where is the place of entertainment?

Wednesday, October 26, 1687.

In the morning they made it appear to their lordships very satisfactorily, that they were obliged to give in charity money, 2*l.* 3*s.* 4*d.* and that besides that, they gave, *communibus annis*, almost 100*l.* as appeared by a paper they then delivered in. Upon this their lordships were pleased to expatiate upon their generous bounty and liberality, saying the complaint of this account was groundless, and that it would induce the king to a better belief of them in all other matters.

Then a petition of Dr. Rogers, late organist, was given in, desiring to be restored, which was read; but several misdemeanors being proved against him, it was thrown out, and he advised to rest satisfied with 30*l.* per annum, which the College had bestowed on him, when they turned him out of his place.

Thursday, October 27, 1687.

This morning they received a list of leases, &c. which had been renewed two years last past. Mr. Charnock, the new convert, asked their lordships, whether those leases stood good,

which had been sealed since Dr. Hough's election? The lord chief justice answered, Yes; for corporations always stick by their seals. Then their lordships perused the College Registers, and finding nothing in them to object against, they were returned, and the court adjourned till the afternoon. At which time their lordships told them, that having received no express from above, as they expected, they would adjourn till Friday at eight in the morning.

Friday, October 28, 1687.

The Commissioners being seated, all were commanded to withdraw: then only the fellows were called in, and the bishop of Chester said they had represented them fairly to the king, but his majesty expected some farther submission, which they advised them to make, by acknowledging their contempt to his sacred majesty in person, and to his letters; and that they should promise to behave themselves loyal for the future; and that they should some ways own the proceedings and legality of the court, and implore his majesty's pardon, and lay themselves at his feet.

The fellows making a little pause, the bishop of Chester told them, they might word it themselves; or, if they thought fit, Mr. Tucker should assist them in a form. Then all the fellows withdrew into the hall, and drew up the following Answer:

"May it please your Lordships;

"We have endeavoured in all our actions, to express our duty in all humility to his majesty; and being conscious to ourselves, that in the whole conduct in the business before your lordships, we have done nothing but what our oaths and statutes indispensably oblige us to, we cannot make any declaration, whereby we acknowledge that we have done any thing amiss, having acted according to the principles of loyalty and obedience, so far as we could, without doing violence to our consciences, or prejudice to our rights (one of which we humbly conceive the electing a president to be) from which we are sworn upon no account whatsoever to depart. We therefore humbly beg your lordship to represent this favourably, with our utmost duty to his majesty, whom God grant long and happily to reign."

Upon their lordships perusing of the Answer, they expressed their dislike of it, saying, it did not come up to the address sent to his majesty at Bath, which was read. To this it was replied, that they hoped their behaviour since had been every way answerable to what they therein promised. Then their lordships said, That it did not come up to what they delivered in on Tuesday.

Dr. Bayly. My lords, we have acted conformable to ourselves; and truly, my lords, I cannot possibly confess any crime.

Bishop Ch. We do not expect of you to con-

fess any capital crime, only to make some acknowledgement.

Mr. Fulham. My lord, we were ordered to address ourselves, as having acted in contempt of his majesty's authority, which, my lord, I look upon as so great a crime, that on no account I would be guilty of it. My lord, we have endeavoured to obey his majesty to the utmost of our power, and seeing your lordships were pleased to accept our answer on Tuesday, I humbly conceive your lordships' honour is engaged, that nothing further be required of us.

Bishop Ch. You are a very forward speaker, and abound in your own sense.

Mr. Fulh. My lord, I hope your lordship will give me leave to speak, when our fortunes are so considerably at stake.

Then Dr. Bayly desired of their lordships to give him leave to explain what he meant by the word 'submit,' in his answer on Tuesday; because (saith he) I hear your lordships understood more than was meant, and lest your lordships should go away under a mistake, by the word 'submit,' in the former answer, I did not intend any future obedience to the bishop of Oxford; but meant it in reference to the king's authority, inasmuch as I did not oppose or resist the bishop of Oxford's instalment.

Upon this, a fresh question was put to the fellows, whether they would obey the bishop of Oxford, as their president, 'in licitis et honestis?' To which all, except one or two, answered, they could not obey the bishop of Oxford as their president.

Then Mr. Fulham was particularly asked the question.

Mr. Fulh. Dr. Hough being duly elected and admitted president, doth thereby obtain a right, which I am not satisfied he hath any way forfeited, and therefore can obey no other person as president.

Bish. Ch. Will you obey the bishop of Oxford as in possession?

Mr. Fulh. I cannot, because the bishop hath not lawful possession.

Then he was asked, wherein?

Mr. Fulh. He had not possession in due form of law, nor by proper officers. I am informed that the proper officers to give possession of a freehold, is the sheriff with a *Posse Comitatus*.

L. C. J. Pray, who's the best lawyer, you or I? Your Oxford law is no better than your Oxford divinity. If you have a mind to a *Posse Comitatus*, you may have one soon enough.

Mr. Fulh. My lords, I intend nothing but respect to your lordships, and have endeavoured to speak and behave myself with due reverence; and I hope your lordships will put a favourable construction on what I said.

Then all were commanded to withdraw, and the Buttery book was called for, and after that, Mr. Fulham was sent for in; and by the bishop of Chester suspended as followeth:

Bishop Ch. 'Mr. George Fulham, We have thought fit to suspend you from the profits of your fellowship during his majesty's pleasure, for your contempt and opprobrious language.'

Then they adjourned till Wednesday the 16th of November, ordering the absent fellows to be sent for home against that time. So they immediately went for London.

Wednesday, November 16, 1687, at nine in the Morning.

The Lords Commissioners being sat, the first thing they did, sent for the Buttery book; then called for Mr. Joyner and Mr. Allibone, and entered them actual fellows: The former in the room of Dr. Fairfax, whom they had expelled: the latter in place of Mr. Ludford, lately deceased: all oaths being dispensed with, besides that of a fellow. That done, the fellows being called, and the reasons given in for those that were absent, the bishop of Chester spoke a speech to this effect:

"Gentlemen;

"Your many contempts and wilful disobedience have occasioned this visitation, which will end at last in your ruin. This society of yours has been long exercised in the methods of quarrelling; has always been troubled with factious spirits, and testy mutineers, ever since the restoration of the late king: You have encouraged quarrels among yourselves; quarrels between yourselves and president: quarrels at length between yourselves and visitor. For I have often heard your late visitor complain, that this society was ever stocked with an unquiet and turbulent generation. By these steps, from quarrelling with the president and visitor, you have at last advanced to the highest pitch of insolence, to quarrel with your prince, and affront his sacred majesty. I endeavoured before, at the opening our commission, to make you sensible of the scandal that your disobedience will bring upon your religion; how much you stain and dishonour your liberal and ingenuous education in this society.

"You cannot but know his majesty is your supreme ordinary. You cannot but have read in Bracton, who was twenty years lord chief justice under king Henry 3. 'Nemo presumat de factis ejus disquirere, nedum contra factum ejus venire.' All disobedience implies pride: For no man can disobey his governor, but he who thinks himself wiser. The reputation and honour of a prince at home, and his respect abroad, are chief standards of a government. But these pillars, as much as in you lies, you have endeavoured to shake. And unless his majesty's honour and right be vindicated by us, he can neither be feared at home, nor observed abroad. Your punishment must be as public as your crime. It cannot be conceived but his majesty, in justice, in honour, in clemency, and in his royal tenderness, could have proceeded otherways than he has done. On the first of April it was published

that Dr. Clark was dead: On the eleventh a *Mandamus* was directed to you, for choosing Mr. Farmer, On the ninth you presented a petition to the lord president; wherein you laid yourselves prostrate at his majesty's feet, representing to him the incapacity of Mr. Farmer, desiring the benefits of his gracious declaration for preserving your rights and properties, and beseeching him to nominate another person qualified according to your statutes, in the election of whom you would shew your ready obedience. So said and so done, gentlemen, had been very well.

"But immediately after the delivery of the Petition, you, not waiting his majesty's Answer, proceeded on April the 15th to an election of Dr. Hough: So that by this act, which was plainly contrary to his majesty's authority, whose mandate did certainly imply an inhibition, you directly confronted your former promises of ready obedience, and were resolved to give the king nothing but good words; When you had done this, as men of ill designs are always in haste, for a confirmation of it, you immediately went and surprized your visitor, and by that means persuaded him to confirm Dr. Hough, that very day he received an order from the lord president to the contrary.

"Upon this news the king was much amazed, and required an account of your proceedings; therefore the lords commissioners issued out a citation; and after hearing the plea, upon mature consultation with the learned of both laws, judged the pretended election of Dr. Hough to be void and null, and him to be removed, by an instrument dated the ——— which was affixed on the gate. After this a mandate was sent on the ——— to you to elect the bishop of Oxon. Upon which terms his majesty was graciously pleased to dispense with your disobedience hitherto. But this being disobeyed, his majesty in person, on the 4th of September, sent for you to Christ-Church, and required you immediately to elect the bishop of Oxon, president. You went strait to the chapel, a place one would think should have inspired more devotion and awe of his sacred majesty in you; and there contemptuously subscribed and signed a paper, directly thwarting his majesty's command. The ground of your disobedience you pretend that you could not elect him, whereas you could not but know by a written mandate, that lay by you, that admission would have satisfied his majesty. Conscience, the stale topic of rebellion, was here brought to vindicate your petulant and contumacious behaviour. You pretended that you were obliged by oaths, and I am sorry that at the same time you forgot that of allegiance. And indeed there is not a greater sign of hypocrisy than partial obedience. Had you any respect to the father of your country, and your mother the church, you would have sacrificed your pretended scruples, as a peace offering to the king. The best of us, I am sure, have reason to beg God and the king's pardon. But you, as if his majesty reigned by

courtesy, would have a king under you, but none over you. You urged the observance of your statutes, of which, as it hath appeared, you have not been so constant observers, when your own humour prompts you to a dispensation, then you can readily embrace it; witness but that of being served 'per masculos,' by which great scandals have come to this society by reason of bastards.

"But when the king interposed, in whose power alone it is to dispense with them, then you presently act according to such methods as these. None of these pretences will ease you with wise and sober men.

"This was the only opposition his majesty in his progress received: Wherever his sacred majesty came, he worked a miraculous conversion, except in Oxford; and so far satisfied every one with the equity of his proceedings, that none went away discontented from his presence, unless it was for this reason, that they could not enjoy it any longer.

"October the 20th, We came down, and upon opening our commission, I took care to represent to you the heinousness of your offence, and to persuade you to a serious repentance; but all in vain.

"For on Saturday morning we required you to admit and instal the bishop of Oxford; which all, except three, refused: In the afternoon Dr. Hough having been deprived, and by us commanded to depart the college, came to us without any leave, but not without great attendance; circumstances, I think, much unbefitting a man pronounced expelled; and there entered a protestation against all that we had done, or hereafter should, as illegal, unjust and null; which he delivered not in writing, but by word of mouth; a thing repugnant to the nature of all appeals: and which was worse, without the usual salvo to his majesty's supreme power. When he had spoken it, there followed such a tumultuous, seditious and insolent hum, which if you yourselves had not applauded, or at least consented to, it was impossible but that you would have discovered some of those mutineers. However, since his carriage and language gave occasion to it, it was thought fit that he only should be obnoxious; and accordingly he was bound over.

"On Tuesday we ourselves caused the bishop of Oxon to be installed by his proxy; after which we proposed to you, whether being now installed, you would submit to him 'in licitis et honestis?' To which you gave an answer under your hands in the affirmative. You then also desired of us to represent your case favourably to his majesty, giving all assurance of your loyalty and obedience. But this assurance of submission lasted not long; for on Thursday, being required of us to subscribe such a submission to his majesty as we thought agreeable to our duty, you required time to consult of it; and after deliberation signed such a paper, which seemed rather to be a protestation against your former submission, than an acknowledgment of your crime.

Upon this we might justly then have proceeded to an expulsion: But we thought fit, in compassion to you, to take a journey to London, and acquaint his majesty with your disobedience and ungrateful behaviour. His Majesty was extremely amazed that his clemency should be despised; but yet, to your comforts be it spoken, his patience and goodness extends as far as your provocations can: But if you still persist in your obstinacy, those that are too tall to stand, and too stubborn to bend, deserve to be broken. And now, I think, I have said enough to let you know, that the fig leaves you have so artificially stitched together, are not sufficient to cover your nakedness: I wish to God you had the same tenderness for your concern, as his majesty's commissioners have for you. But if you still persist to oppose the royal power of the king, we, who are come to vindicate the right and honour of his majesty, resolve to discharge our consciences and duties to God and the king, without any respect of popularity; that is but the paradise of fools, and scorn of wise men: And therefore, as for us, we have no more regard to people's dislike, than what they dream. By reason therefore of your late hypocritical submission, the commissioners have thought fit, upon mature consideration, to draw up an instrument, which shall be read to you, to which, if you shall immediately subscribe, before you leave the room, we shall leave you to his majesty's pardon. And this we expect from you all, except Dr. Thomas Smith, and Mr. Charnock, with whose behaviour the king is so well satisfied, that he expects no more from them."

Then all the Fellows being called in, their lordships tendered a form of Submission to them to be signed: Which take as followeth:

"To the King's most Excellent Majesty.

"The humble Petition and Submission of the Fellows of St. Mary-Magdalen-college in the University of Oxon, whose Names are subscribed.

"We your Majesty's most humble Petitioners, have a deep sense of being justly fallen under your majesty's displeasure, for our disobedience and contempt to your majesty and to the authority of your majesty's commissioners and visitors: We do in all humility prostrate ourselves at your majesty's feet, humbly begging your pardon for our said offences, and promising that we will for the future behave ourselves more dutifully; and as a testimony thereof, we do acknowledge the authority of your majesty's said visitors, and the justice of their proceedings; and we do declare our entire submission to the lord bishop of Oxon, as our president."

To which Paper all (except Dr. Thomas Smith and Mr. Charnock) refused to subscribe.

Dr. Aldworth, as Vice-President, was first called in to sign the paper which had been read to all the fellows.

Vice-Pres. My lords, we desire time to consider of it, and to give our answer in writing.

Bishop Ch. No, you must every one sign, or refuse, as you are called.

Bar. Jenn. There is no answer to be given, but ay or no.

They all moved again for time, but it was refused.

Vice-Pres. My lords, this is the first time of my appearance before your lordships since your sitting here; and therefore I pray to be heard. My lords, I am as ready to comply with the king's pleasure as any man living; neither do I know that we have ever in this place been disobedient to the king, where it was in our power to obey his commands. Our founder, in the first clause of the oath we take at this election, has provided, that no one shall be president of his college, but who was bred in it, or in the college where he himself was bred. Now for us who have elected Dr. Hough, a person qualified according to our statutes, who has been installed, sworn, confirmed, and approved of in all the ways and manner prescribed in the statutes; for us, my lords, to accept and admit of a stranger, and a foreigner, in his place, is, to the best of my understanding, a giving up the rights of the college to other uses than the founder designed it.

Here he was interrupted.

Bishop Ch. Your statutes are over-ruled by the king's authority.

Vice-Pres. My lords, your lordships sit here as the visitors; which implies, there are certain laws and statutes we are bid to observe, and by which we are to be governed; and if it shall appear to your lordships that we have acted conformably to these statutes, I hope we shall neither incur the king's displeasure nor your lordships. The whole tenor of our statutes run, that we should inviolably maintain our rights, and observe the rules of our founder; he has laid his curse upon us, if we vary from them. [Here he repeated the words of the founder. 'Or-
'dinamus sub pœnâ anathematis et indigna-
'tionis omnipotentis Dei, &c. Item sub
'interminatione Divini Judicis interdicimus.']

Bishop Ch. Are you not to obey the king as well as the founder's statutes?

Vice-Pres. My lord, I ever did obey the king, and ever will: Our statutes, which we are sworn to observe, are confirmed by several kings and queens before and since the reformation, and as we keep them, are agreeable to the king's laws both ecclesiastical and civil; and so long as we live up to them, we obey the king.

Bishop Ch. Your statutes were never confirmed by his present majesty.

Dr. John Smith. My lord, neither have they been repealed by his majesty; and what is not repealed is confirmed.

Then their lordships pressing to sign or refuse, the Vice-President said:

Vice-Pres. My lords, I will then deal plain-

ly, in regard to my oath and the statutes to the right of all our successors and of Dr. Hough, whom I believe to have been as fairly elected, and as legally possessed as ever any since the foundation of the college: I cannot submit to the bishop of Oxon as president.

So he was ordered to withdraw.

Then the same question was put to all the other fellows singly, who all refused to sign the submission, except Dr. Thomas Smith and Mr. Charnock, who were not pressed, for the reason above.

Mr. Thompson being called in to sign the paper, said:

Mr. Thompson. My lords, I have been always obedient to his majesty's commands; I was not concerned in the election of Dr. Hough: I voted for Mr. Farmer, and am ready to submit to the bishop of Oxon.

Bishop Ch. Did you not put your hand to this petition? Is not this your hand?—Read the petition—[It was read.]—In which the fellows desired his majesty to nominate any qualified person, and to retract his mandate granted for Mr. Farmer.

Mr. Thompson. My lord, I conceive the petition not to be disobedient. We had not yet received the mandate; as soon as it came, I humbled myself.

Bar. Jenner. Then why cannot you humble yourself again; is there any hurt in it?

Mr. Thompson. This paper requires me to own my disobedience to his majesty: I am not conscious of any, and therefore I cannot subscribe.

After a short time, all who refused to sign the Submission were called in, and by sentence of their lordships, expelled the college for contempt, &c. (except as before.) After Sentence, all that were expelled spoke to this effect: 'My lords, we profess all duty to the king, and respect to your lordships, but must beg leave to declare; That we think ourselves injured in your lordships' proceedings, and therefore protest against them, and shall use all just and legal ways of being relieved.'

After a short time, an Instrument was fixed on the College-gates, in these words:

'By his Majesty's Commissioners for Ecclesiastical Causes, &c. particularly authorized and impowered to visit St. Mary-Magdalene College; in the University of Oxon.

'Whereas, in our visitation of the said college, it appeareth unto us, That Doctor Charles Aldworth, Dr. Alexander Pudsey, Dr. John Smith, Dr. Thomas Bailey, Dr. Thomas Stafford, Mr. Robert Almond, Mr. Manwaring Hamond, Mr. John Rogers, Mr. Richard Strickland, Mr. Henry Dobson, Mr. James Bailey, Mr. John Davies, Mr. Francis Bagshaw, Mr. James Fayrer, Mr. Joseph Harwar, Mr. Thomas Bateman, Mr. George Hunt, Mr. William Cradock, Mr. John Gill-

‘man, Mr. George Fulham, Mr. Charles Pennyston, Mr. Robert Hyde, Mr. John Yerbury, Mr. Robert Holden, and Mr. Stephen Wilks, fellows of the same college, have been severally guilty of disobedience to his majesty’s commands, and obstinately contemned his royal authority, and do still persist in the same: we have thought fit, upon mature consideration thereof, to declare, pronounce, and decree, That the said Dr. Charles Aldworth, &c. and every of them, be deprived and expelled from their respective fellowships. And we do by this our sentence and decree, deprive and expel them of and from their said several and respective fellowships. Given under our seal, this 16th day of Nov. 1687.’

Whitehall, December 10, 1687.

‘His majesty’s commissioners for ecclesiastical causes, and for visiting all cathedral and collegiate churches and colleges, &c. met this day; and taking into their consideration all that had passed in the business of St. Mary-Magdalen college in Oxford, and the contemptuous and disobedient behaviour of Dr. John Hough, and several of the fellows of that college throughout the whole proceeding, their lordships declared, decreed, and pronounced, That Dr. Hough, Dr. Charles Aldworth, Dr. Henry Fairfax, Dr. Alexander Pudsey, Dr. John Smith, Dr. Thomas Bailey, Dr. Thomas Stafford, Mr. Robert Almond, Mr. Manwaring Hamond, Mr. John Rogers, Mr. Richard Strickland, Mr. Henry Dobson, Mr. James Bailey, Mr. John Davies, Mr. Francis Bagshaw, Mr. James Fayrer, Mr. Joseph Harwar, Mr. Thomas Bateman, Mr. George Hunt, Mr. William Cradock, Mr. John Gillman, Mr. George Fulham, Mr. Charles Pennyston, Mr. Robert Hyde, Mr. Edward Yerbury, Mr. Henry Holden, and Mr. Stephen Wilks, should be incapable of receiving, or being admitted to any ecclesiastical dignity, benefice, or promotion: And such of them who are not yet in holy orders, were adjudged incapable of receiving or being admitted into the same. All archbishops, bishops, and other ecclesiastical officers and ministers within the kingdom of England, being required to take notice of the said sentence and decree, and to yield obedience thereunto.’

The 17th of January, 1688, being the day that the thirty demies of Magdalen college were, by summons from the bishop of Oxon, the now president, commanded to appear before him; and none appearing, Mr. Charnock, the new vice-president, called for the buttery-book, and struck out the names of

Mr. Holt, Mr. Adams senior, Mr. Vesey, and Mr. Brabourn, masters of art; Mr. Hyde, Mr. Woodward, Mr. Fulham, Mr. Watkins, Mr. Stacy, Mr. Sherwin, and Mr. Kenton, bachelors of art; Mr. Cross, Mr. Bush, and Mr. Wells, under-graduates; which fourteen were

VOL. XII.

then resident in the university, and three more, who escaped expulsion at that time.*

Afterwards, when the king had certain intelligence of the prince of Orange’s design, viz. October 12, 1688, he ordered the bishop of Winchester, visitor of Magdalen college, to settle that society regularly and statutely; accordingly, October 16, the bishop of Winchester caused a citation to be fixed on the gate of the college, to recal Dr. Hough, and the former fellows of this society, by the 2nd of November following; but an account coming that post of the prince of Orange’s fleet being disabled by a storm, the bishop was recalled to London, and the restoration of the college put off: but when it appeared that the fleet was ready to sail again, then the business of the college was resumed, and effected Nov. 24.

For other instances of this king’s arbitrary and foolish attempts to force Papists into stations of rank, wealth and power, in the universities, see Dr. Peachell’s Case in this Collection, vol. 11, p. 1316.

The following passage is from Nash’s Hist. of Worcestershire:

“In the year 1687, when the king made his progress through part of England, the bishop sent his servant to Bath, to invite his majesty to his palace at Worcester, where he had the honour of entertaining him the 23d day of August, the eve of St. Bartholomew. He met him at the gate of his palace, attended by his clergy, and in a short Latin speech, welcomed him to the

* The following document is among the archives of Corpus Christi college upon a small sheet, addressed, “To the Rev. Dr. Thomas Turner, at Ely-house, in Holborne:”

“Quandoquidem Mr. Holt, Mr. Adams, Mr. Vesey, Mr. Brabourn, Ds. Hyde, Woodward, Ds. Fulham, Ds. Watkins, Ds. Stacy, Ds. Sherwin, Ds. Kenton, Bush, Cross, Wels, Scholares Collegii Magd. Universit. Oxon. vulgo dict. demys contra statuta et ordinationes hujus collegii jamdudum rebelles et inobedientes extiterint, et usque modo in rebellione et inobedientiâ perdurent, et conspirationes contra quietum regimen hujus collegii aut fecerint aut facientibus consilium aut favorem præstiterint, et ea facta perpetraverint, quibus grave damnum, præjudicium, et scandalum dicto Collegio generatur; de quibus per evidentiam facti convicti sunt. Idcirco nos Præses Vice Pr. et Decani dicti Coll. a dicto Coll. auctoritate nostrâ Scholares prædictos amovemus, privamus, et eos ex nunc amotos et privatos esse declaramus. Dat. in Coll. nostro Magdalen. decimo sexto die Januarii, 1687-8.

(Copia vera) SA. OXON, P.

ROB. CHERNOCK, V. P.

PHIL. LEWYS, Theolog. Dec.

THOMAS FAIRFAX, Artium Dec.”

E

city. His majesty walked upon a large-piece of white broad cloth of the manufacture of the city, all strewed with flowers, which reached from the palace gate to the stairs leading up the great hall: as he went along he said, "My lord, this looks like Whitehall." Having refreshed himself after his journey, he went to see the cathedral, the dean attending his majesty to the college gate, from whence he went to see the curiosities of the town, and among the rest, was shewn where the battle was fought between Oliver and his royal brother, who from thence made a narrow escape; his majesty being forced to alight from his horse to get into Sidbury gate, and a cry being made for a horse to remount the king, one Mr. Wm. Bagnal, who then lived in Sidbury, turned out his own horse ready saddled, upon which his majesty fled through St. Martin's gate, and so to Boscobel, to a daughter of Mr. Bagnal. Dr. Thomas, when dean of Worcester, married his eldest son.

"The next morning being the feast of St. Bartholomew, the king went to hear mass at the popish chapel, built at his accession to the crown, on the east side of the Foregate-street, attended by the mayor and aldermen, whom, when they came to the gate of the chapel, his majesty asked, if they would not go in with him; to which the mayor with a becomingspirit replied, "I think we have attended your majesty too far already." This worthy magistrate, who preferred his religion, and duty to his country, to every other consideration, should have had his name recorded in letters of gold: I have taken some pains to find out who it was, and believe it to be either Thomas Bearcroft or Thomas Shirwin, the former was elected by the new charter, the latter by the old charter restored. Upon this answer made by the mayor, the king went into the popish chapel; and the mayor, with all the Protestants who attended him, went to the college church, where, when divine service was ended, the bishop waited on his majesty till dinner came in, and the meat being set upon the table, he offered to say grace; upon which the king was pleased to say, he would spare him that trouble, for he had a chaplain of his own, upon which the good old man withdrew, not without tears in his eyes."

[In the *Biographia Britannica*, Article Dr. John Smith, it is mentioned, that Dr. Thomas Smith gave him a transcript of an authentic Narrative (from which some extracts are inserted in the *Biographia**) taken by

* Macpherson, also, in his *Original Papers*, has published some passages under the title of 'Carte's Extracts from Dr. Smith's Loose Papers.'

himself of the Visitation and Proceeding against Magdalen College, of which he was then one of the senior fellows. This transcript* is now the property of the very learned Francis Hargrave, esq. who purchased it at the sale of the books of his uncle, Mr. Smith Hargrave, whose mother was the daughter of Dr. Joseph Smith, provost of Queen's college, Oxford, the brother of the above-mentioned Dr. John Smith. By the kindness of Mr. Hargrave, I am permitted to subjoin this Narrative, which is as follows:]

AN ACCOUNT OF THE PROCEEDINGS AT MAGDALEN COLLEGE, OXON, 1687.

HEARING from Dr. Ironside,† then vice-chancellor of Oxford, and others, that they had met with a report that I had endeavoured to get the king's mandate for the Presidentship of the college, then vacant by the death of Dr. Clarke, I replied, that I had as good a pretention (it may be without the least guilt of immodesty) as any other, and that I knew so well how the presidentship had been disposed of by the kings and queens of England, that I saw no ill or indecency in such an application. But the whole affair in short lies thus:

My friend and colleague, Dr. Younger, came to my lodging at Charing-cross, London, on Easter eve the 26th March 1687, about ten of the clock, just as I was going to bed, to acquaint me, that that evening a messenger came to him from my lady Shuttleworth, in Lancashire, to let him know that her father, Dr. Clarke, died at her house a few days before, and that this was a secret, and to be made use of accordingly. I told him that the lady — by this quick and speedy message designed to pay him a particular respect and kindness, as being her father's intimate and dear friend, and that by all means he should procure by the interest of princess Anne, whose domestic chaplain he was and is still, the king's recommendatory letters to the college, which would put the matter out of all possible doubt and question, this being consonant to the often repeated advice I had given him long before of looking after the presidentship whenever it should be vacant by Dr. Clarke's resignation (which once he was inclinable enough to have done in favour of Dr. Younger) or by his death, he growing in years and becoming very crasy.

* In one of the pages of it, is the following memorandum: "This book was transcribed from a MS. in Dr. Smith's own hand-writing, partly by cousin John Smith, son to my cousin George Smith, esq. of Barn-hall, Durham."

† I believe he was warden of Wadham college, and, after the Revolution, bishop successively of Bristol and Hereford.

But the doctor told me, no; that he had thought often seriously upon it, and now more especially; that such a kind of life did not suit with his genius; that he should be happy enough without it when the living of Bishopston should fall by the death of the incumbent, who was then about fourscore years of age; that he also absolutely refused meddling with it and stirring for it, and then advised me to look after the presidentship, and to use my interest in court to procure it and take time by the foretop. I thanked him for his information and advice as the effect of a long and dear friendship between us, and told him, that it was now late at night: that the next morning being Easter-day I intended to receive the Eucharist in Whitehall chappel; that that day was too sacred and solemn to do any business in, however, that after I had performed my devotion, I would then reflect on his advice and consider what was best to be done.

On Monday morning the 28th of March, I went to Thistleworth to Dr. Parker, bishop of Oxford, with whom I had then and several years before an intimate acquaintance, to desire him to go to London, and to represent me to the king, and acquaint him with his knowledge of me. I found him not well, and he assured me that he could not go that little journey without great inconvenience, but said he, I will write for you, and that will be as well. So I being in haste to return to London, he retired immediately to write the letter which he said he would give me. After about half an hour he brings me a letter directed to his landlord where he had lately lodged dwelling in the Haymarket, saying when he gave it me, there is another letter enclosed; you must not know or enquire to whom it is directed. This if any thing will be effectual, nor would he ever tell me afterwards, who the person was to whom he wrote, though I learned it not long after by a mere accident. After 3 or 4 days I went to Thistleworth a second time to know what answer he had to his letter; for I was not to stir or say any thing of the business 'till I heard from him. He then told me, that he was not my competitor, notwithstanding the noise of the town, that the king would make him president. That the king expected that the person he recommended should be favourable to his religion, and then asked me what I would do, or could do therein? I replied, my lord, I pray acquaint the king, that if his majesty shall please to recommend me to the College I will make it my business to advance piety and learning, to keep men dutiful and obedient to his person and government, and truly loyal, and to promote true Catholic Christianity: and I hope, said I, the king will require no more of me; for this is all I can do: He answered me, This I assure you will not do. I said to him, Then let who will take the presidentship for me, I will look no more after it; you are the only person I have addressed to about it. I prayed him upon his next going to court to acquaint the king with the answer I made, and to assure

his majesty of my unalterable loyalty, whether he should think fit to recommend me or otherwise. After this I made no address in the least to any person, either in the court or out of it, about this matter, as having been fully convinced by the discourse which I had with bishop Parker, that all future attempts, as things then stood, would be vain and to no purpose.

April 5th. I went over to wait upon my lord archbishop of Canterbury at Lambeth; after dinner his grace came to me, standing by the window, and spake to me in these words; Doctor, will the presidentship of your college fall into your hands? I answered, No, my lord, I do not expect it. I shall never agree to the conditions. He replied, What conditions? I said again in general terms only, (without mentioning the discourse I had had a few days before with bishop Parker) I know very well, what I say to your grace; then said he, without asking any further question, well Doctor, I know you are an honest man. May you have your reward, if not in this world; yet God is a good paymaster. So he left me, and went to other company.

AN IMPARTIAL RELATION OF THE ELECTION OF A
PRESIDENT OF ST. MARY MAGDALEN COL-
LEGE, OXON, IN APRIL 1687, AND THE FOL-
LOWING VISITATION.

On Sunday, 10th April 1687, in the afternoon, Mr. Francis Bagshaw one of our fellows came to me by order of the vice-president and fellows then at home to my lodging at Charing Cross, with a petition to the king, which he immediately put into my hands, and of which I took a copy. [Here follows the Petition as given in the preceding report.]

This Petition had no date, but was written and subscribed the day before, Mr. Bagshaw telling me that he and the servant sent up with him, rode a good part of the night to reach London the next day in good time.

Upon my reading the petition, I told him, it seemed to me in several points defective; however I would sign it with all my heart, and immediately did so; and then telling him that understanding by him he was to do nothing without my advice and direction, my advice and opinion was, that he and I should present our petition to the king that evening, either as he went to, or came from the cabinet council, whereupon he produced an order from the vice-president and fellows that he should deliver it to my lord president the earl of Sunderland, with a letter from the bishop of Winchester to him, at which I could not but express a hearty sorrow.

In obedience to this order we went immediately to my lord Sunderland's lodgings: and he having then newly dined, we were admitted, and acquainting him with our business: We gave him our petition and the visitor's letter. I told him the gentleman with me with a

sword by his side was a fellow of the college, and that the college, raising a company upon Monmouth's invasion, we chose him captain of it, to whom the king had given a commission, which was countersigned by his lordship. I asked him when we should wait upon him again for an answer, he told us, on Tuesday morning, and so we were dismissed.

The next day 11th (Monday) meeting with my friend sir Theodore de Vaux, I prevailed with him to go and sup with my lord chancellor Jefferies that night, and by a side wind question, beginning as it were an accidental discourse about the college which was the common argument of discourse, not only in the court but all the town over, to learn of him what was the fate of our petition. My lord, said he, I hear the fellows of Magdalen College have petitioned the king about their election, and against Mr. Farmer, recommended to be their president. He replied, No such matter, they are too proud to petition. I was at the council last night before the king came, and stayed till after he left it, there was no petition either mentioned or produced. When I heard this from sir Theodore de Vaux I was amazed, and began to fear that my lord Sunderland had suppress our petition.

On Tuesday morning the 12th Mr. Bagshaw and I went to my lord Sunderland's lodgings, and having sent in our names by one of his servants, he told us that his lord would have us come the next day.

On Wednesday morning the 13th Mr. Bagshaw and I went, and Dr. Jessop his lordship's chaplain accompanied us: and after some little stay we were called in, and my lord Sunderland spoke to us in these words: 'Sir, I have delivered the bishop of Winchester's letter and your address to the king: the king has sent down his letter to the college, and expects to be obeyed, adding he had nothing more to say.' Before I went down into the stone gallery, after we had left him, I put down his very words in my table book whilst they were fresh in my memory. Coming to Whitehall gate I advised Mr. Bagshaw to go out of town that afternoon, and carry back this answer to the college, which he promised me to do. For my own part I could not resolve on a sudden what I should do. So we took leave of Dr. Jessop. He and I went into the park to consider what was best for me to do, whether go or stay; for I had heard that the fellows were resolved to proceed to election on Friday the 15th. I was not bound to be present, it was enough that I was summoned in the general citation on the chapel door, nor was there any danger of being absent (and several were absent at the election) besides at that time my distemper of gravel was heavy upon me, but reflecting that Mr. Bagshaw might not for some reasons, I began to admit, go directly to the college, and that it would have been turned upon me, that not hearing of any answer from the king, they went to election. I resolved to return to Oxford the next

day Thursday the 14th, in the flying coach, which I effected not without difficulty. Upon my coming home late about nine at night, I enquired for Mr. Bagshaw; who was not, I was told, then returned, or at least his return was concealed from me: (for he did not appear till the next morning) the account of which surprised me, and reconciled the difficulty, as it proved in my circumstances, of that day's journey to me.

I walked in the cloisters till about 10 that night, resolving to speak with the vice president and several of the senior fellows who were in the town. Upon their return I acquainted them with the earl of Sunderland's answer; which one of them desired me then not to mention to the juniors. I fully perceived by their discourse that they were resolved to elect the next morning, and they told me as much very plainly. On Friday morning 15th of April, the porter came to me in the name of and by the authority of the vice-president, to warn me to the election of a president, and to give me notice that the sacrament would be administered before it.

Soon after the Vice-President came to my chamber to discourse me about our great affair, and to know what I would do; I told him very frankly what I thought ought to be done in our present circumstances, and that it was most adviseable to petition the king a second time, and that I would read a paper which I had prepared that morning to the same purpose, publicly before all the Fellows. He said the advice was good, and that though as Vice-President he needed not to vote, till we all had voted, yet to shew his readiness, he would vote in the first place for it. Soon after, having put on my surplice and hood, I went to the chapel. As soon as all the Fellows then at home were come together, the vice president in the entrance, just within the quire, hard by his seat, the company promiscuously standing about him, addressed himself to me, saying; That he had read the king's letter to the Fellows when I was absent at London, where I had been ever since the 19th of February, and that he would read it again for my satisfaction, which I desired him to do, and it was done accordingly. After which he said to me, Dr. Smith, pray acquaint us with the answer that his majesty was pleased to return to our petition; which I told him not long before in my chamber, that it was absolutely necessary for me so to do, having been employed by them as a body of men; with which resolution he was very well satisfied. Whereupon I told them that to prevent all mistakes, I would read it out of a paper, which contained these very words:

'Gentlemen; I find myself obliged to acquaint you all at this solemn meeting, what I told the Vice-President and several of the Fellows last night; that waiting with Mr. Bagshaw (Dr. Jessop being also in our company), upon my lord Sunderland, on Wednesday morning last, according to his lord-

‘ ship’s appointment, to know what answer his
 ‘ majesty was pleased to return to the petition
 ‘ of the College, delivered by us to his lordship
 ‘ on Sunday afternoon, April the 10th; he told
 ‘ us, that he had delivered the bishop of Win-
 ‘ chester’s letter and our address (for so he was
 ‘ pleased to call it) to the king; that the king
 ‘ had sent his letter to the College, and that he
 ‘ expected to be obeyed; adding, that he his
 ‘ lordship had nothing more to say.

‘ THOMAS SMITH.

‘ St. Mary Magdalen College, Oxon, 15th
 ‘ April, 1687.

This done, I desired that I might read another paper which I held in my hand, and which is as follows word for word :

‘ Gentlemen; It is my opinion, (for I will
 ‘ not pretend to call it by any other name
 ‘ much less by that of advice, leaving every
 ‘ one here present the liberty of his own judgment) that his majesty not having thought
 ‘ fit upon our late application to him to revoke
 ‘ his royal mandate; nor, as we pray in the
 ‘ close of our petition, to leave us to our own
 ‘ choice according to the direction of our
 ‘ founder’s statutes; nor to recommend such a
 ‘ one as may be more serviceable to his majesty and to the College; we most humbly
 ‘ petition the king again, and represent the several respects referred to in our petition,
 ‘ which render Mr. Farmer incapable of being
 ‘ elected and admitted President. This method
 ‘ and procedure being most prudent and dutiful, and fit to be entered upon immediately;
 ‘ the king having interposed his royal pleasure
 ‘ and authority, which if it had not been done,
 ‘ I readily acknowledge, that we not only
 ‘ might but ought to proceed to the election of
 ‘ a President in this very instant according to
 ‘ the express letter of the statute, in every particular. But for this let every one concerned be his own casuist. These are my
 ‘ private thoughts, and upon mature deliberation, I conclude that I should be very defective in my duty to the king, and in my
 ‘ respect to you, whatever misinterpretation
 ‘ possibly some may frame of them, if I had
 ‘ not made you acquainted with them at this
 ‘ meeting.

THOMAS SMITH, D. D.

‘ St. Mary Magdalen College, April 15, 1687.’

Having read my two papers, I bid Mr. Almont, steward of the college, and public notary, then present, to take notice of what I had done.

The Vice President then proposed to the company whether they would petition the king again, and defer the election; and first and before all declared himself to be of that judgment, and so the two next senior fellows, Dr. Fairfax, Dr. Pudsey and myself. All the rest were for present election. Thus the generality carrying it for a present election, several hot debates arose about the king’s letter, and horrible rude reflections were made upon the king’s authority, that he had nothing to do in our affair, and

things of a far worse nature and consequence. Upon which I told one of them that the spirit of Ferguson had got into him, but there was no prevailing upon them by reason and argument. The Vice President proposed how they would manage the election, whether according to the direction of the statute by scrutiny upon oath, or *viva voce*, as was used, when the late president was recommended by king Charles the 2nd to the College, and when fellows have been received into the society by virtue of the king’s letters; which indeed was our constant practice during king Charles the 2nd’s reign after the restoration, and was done but some few months before in the case of Mr. Charnock, and Mr. Peniston; whereas we are as much bound by the letter of the statute to choose a fellow by oaths as a president. When it came to my turn to vote in the order of my course, the senior always voting first, I told them that I persisted in my former judgment that it became them in duty to petition the king again, and not precipitate an election, for several reasons, which I then alledged; only two were for electing *viva voce*: all the rest for electing by scrutiny. This point being gained, I foreseeing the consequences of this hasty and undue election, desired the vice president to give me leave to go away immediately, for that it was clearly my opinion and judgment that we lying under a restraint by his majesty’s letter (abstracting from the consideration of the person recommended therein) might, without the guilt of the breach of the Founder’s statutes, defer the election for some time. But the vice president would not grant me leave to depart, which I bid the public notary take notice of. One of the senior fellows told me that I would be expelled if I refused to go to an election, and others said, that I would at least run the hazard of expulsion, if I offered to go away, whereupon I stayed, though I perceived afterwards that Mr. Charnock, who by this time was a declared Papist, and Mr. Thomson who at that time was one of the band of pensioners, at Whitehall, quitted the chapel and retired at that time. The election of a president in this solemn manner being resolved upon, the fellows soon after took their seats (for hitherto we stood all promiscuously together or running to and fro in a tumultuous manner) and one of the senior fellows, supplying the place of the dean of Divinity, who was absent, went up to the altar and began the communion service. After the sacrament was ended, several went into the outward chapel to unrobe themselves, and myself among the rest, which the vice president observing said, Whoever goes out is to return hither upon pain of expulsion, and I meeting in the outward chapel with Dr. Fairfax, he said to me in the way of friendly advice that it was not safe for me to go away.

After all were returned into the inner chapel the vice president standing in his seat read the statute of the Founder ‘de electione presidentis,’ and the statute of the land as is required at elections, and administered the oath laid down in the

college statutes to the senior fellow of all ; who being sworn, the four next seniors, of which I was one, being called to be sworn, I said, Mr. Vice President, you require me to take the oath and I must obey ; he replied that the statute obligeth you, not I. The oath was taken by all but the two above-mentioned, who, after the communion was over, returned. The two senior fellows who were to take the scrutiny, being sworn again, they went up to the altar, and there received the suffrages of those who had been sworn, secretly in writing ; and after a little time, two of the nominated, having the major part of the votes of the fellows present, which is a necessary qualification appointed by the statute, which were Mr. Hough and Mr. Maynard, the thirteen seniors, who are to elect one of the two thus nominated, proceeded to a second scrutiny : and Mr. Hough had all the votes of the electors but one, and his own : for by reason of the absence of several of the actual seniors, he came into that number : and accordingly he was declared and pronounced duly elected president of the college. Thus the election was finished at that meeting, after we had been in the chappel almost five hours.

It was ordered at the meeting, just after the election was over, that Mr. Maynard should accompany the president elect to Farnham, according to the direction of the statute to be presented, admitted and sworn by the bishop of Winchester our visitor. An instrument about the election was drawn up in the afternoon and sealed with the college seal : and in the evening they began their journey to Farnham, about 36 miles from Oxford. Upon their arrival there, they met with quick dispatch, the visitor telling them, as Mr. Maynard upon his return told me, that he admired their courage ; and an instrument of the president's being admitted and sworn before him, the next day (16th) being drawn up with all possible haste, to prevent any inhibition that might come from the king, which was both expected and feared, they returned to the college on Sunday morning the 17th of April. In the afternoon the president was again sworn and installed in the chappel, and soon after took possession of the lodgings.

It was thought necessary in order to maintain this election, and to keep off the king's displeasure, to address to the duke of Ormond, whose chaplain Mr. Hough had the honour to be, that he would use his interest with the king and intercede for the college. A letter was accordingly drawn up, dated April 19th, 1687, and sent to him in the country, of which I was wholly ignorant, much less did I subscribe it, though it appears by the very letter, which the duke of Ormond sent up to court, that they very knavishly and basely foisted my name into the subscriptions of the fellows, which fourbery I did not discover till I read the letter with the subscriptions, printed by Dr. Johnston in his *Vindication of the King's Vindictorial Power* about a year after, p. 11, 12, 13,

which was matter of amazement to me. Besides that they all knew, if I had been spoken to, I should never have consented, several things contained in it being contrary to my express declaration and judgment. I did not vote for Mr. Hough at all, either in the first nomination or after scrutiny, but being upon oath, first named two others, whom I believed and knew to be better qualified : of the two named, which had the majority of all the fellows present, one of which was necessarily to be chosen, I was for the other ; strictly herein following the dictates of my judgment and conscience, according to the oath I had then newly taken, as a senior fellow and a new elector.

About the 23d of April, a letter written two days before, 21st April, came from my lord Sunderland directed to the fellows of the college, requiring us in the king's name to give an account of what had passed at the election the week before, and whether the king's letter mandatory had not been delivered before the election of Mr. Hough. To this an answer was framed, to which I told them I could not subscribe, nor approve of the case drawn up, in several of the particulars alleged : and therefore I desired to be wholly unconcerned for the future, as I really was, in this troublesome business, which might have been prevented by our petitioning the king a second time ; and upon the reading both of the letter and case, I bid Mr. Almont our steward and public notary take notice, that I disliked several things both in the one and the other, and before him and in the presence of the fellows in the chequer, publicly interposed my dissent. After this I refused to be present at other meetings which were had about petitioning the king. A petition, I heard, was drawn up to be presented to the king, and the president and three or four of the fellows with him, went up on Wednesday 27th April, to deliver it.

About the 6th of June, I asked leave to be absent for some time from the college, and went to London ; where I continued extremely afflicted for the troubles brought upon the college by this hasty election : nor would my curiosity carry me to Whitehall to be present at the several times the fellows were summoned to appear by his majesty's commissioners for ecclesiastical causes, and for the visitation of the universities, sitting at Whitehall, though one or other of the fellows would come to my lodgings, and give me a particular account of their proceedings, which no way concerned me to relate.

After above four months stay at London, during the great contests between the king and the college, hearing for certain that there would be commissioners sent down to Oxford to visit the college, where every fellow would be peremptorily cited to appear under severe penalties : I thought it became me both in point of duty and prudence to return : and accordingly I got home to the college, October 14th.

Wednesday, 19th October, an instrument

was affixed both upon the outward gate of the college, and that of the chappel, peremptorily citing Dr. Hough and all the fellows to appear before the three commissioners, the bishop of Chester, lord chief justice Wright, and baron Jenner, on Friday morning at 9 o'clock in the chappel of the said college.

On Thursday afternoon, October 20th, the commissioners came to town, being attended with three troops of horse of the regiment of the earl of Peterborough, then quartered at Oxford. Friday, 21st October, the commissioners came down to the college, and were received at the gates (which were a little before thrown wide open) by all of us, and they went directly to the chapel, but there being no conveniences there, and preparations not being made according to their mind, they adjourned to the college-hall. Then Mr. Tucker the register read the commission, which being done, the names of the president and fellows were called over: Dr. Fairfax only absent of the fellows which were in town. The names of those absent from the university were noted, excuses made by several in their behalf for such their absence: the commissioners asking where they were, and what distance from Oxford. This took up some time. Afterwards the bishop of Chester, who was first in the commission, made a speech, which being over, they adjourned the court till two in the afternoon, and so went to prayers. Afternoon they called over the names of the rest of the college, demys, chaplains, &c. After this Dr. Hough demanded a copy of their commission, which was denied him, and several discourses happened hereupon between them and him, about the order of the commissioners at London vacating and annulling his election. Then our petition was read, which was delivered by me and Mr. Bagshaw to the earl of Sunderland on the 10th of April, and discourses upon it. The commissioners ordered us to fetch the buttery book, the statute book, the registers and leiger books, to bring in an accompt of the standing revenue of the college, and what monies have been levied for fines for these two last years, and what land or estate given for hospitality, which has not been applied for that use. They bid us deal ingenuously with them, for they would deal fairly by us.

Adjourned to the next day, 9 of the morning, to the common room, where all the other meetings of the court were held. Saturday, 22d October, we were all soon bid to withdraw: then the president was called in by himself, where after some debate, as he told us, he was admonished to deliver up the keys of the lodgings, which he refusing to do was ordered to withdraw, and after some little time we were all called in together. Dr. Cartwright the bishop of Chester, admonished Dr. Hough three times to depart the college peaceably, to deliver up the keys, and to quit all further pretensions to the presidentship. He replied, that he would not deliver up his keys, no, not to the bishop of Winchester, that he had never

been cited, and could not be turned out of his freehold. They answered him that he had been cited as fellow, and that he was never owned by them as president, the election having been declared null. He still persisting, Mr. Leigh, proctor for the king, desiring sentence of their lordships against Dr. Hough, for his contempt and contumacy. The said bishop of Chester proceeded in these words:

'Dr. Hough; by virtue of the king's authority, and a sentence passed at London by the lords commissioners for ecclesiastical affairs, we deprive you of the president's place, and order you to depart the college presently: and we order also your name to be struck out of the Buttery book.' Afterwards Dr. Fairfax was called in by himself. Soon after all the fellows; the king's letters mandatory for admitting the bishop of Oxford president were read. The fellows were asked in these words whether they would obey the king's mandate for the bishop of Oxford to be president. Dr. Fairfax, who did not appear the day before being under a suspension, said nothing. Dr. Pudsey demurred at first, and said that he would submit to the king, though he could not admit but would be present at the admission, my answer in my turn was, word for word this, as I put it down there in the room in my note book: 'My lords commissioners, if it be the king's pleasure to make the bishop of Oxford president, and that your lordships acting by that authority have declared him such, I do, because I must, submit. I make no opposition.' All the rest refused, saying that it was against the statutes and their oath; and would not, except Mr. Charnock and Mr. Thomson. The commissioners put down every fellow's answer in writing. It was said then, that Dr. Hough had been examined in private, whereupon they told us that it was only for the greater convenience to themselves, and us; but that they did nothing, but what they would let all the world know, and so they read Dr. Hough's answer. Then they said to us, if you think that we have not taken your answers right, put them in writing yourselves against the afternoon, to which time they adjourned.

Saturday afternoon. The court being sat, Dr. Hough came to the table, and after a little while said to the commissioners, 'Whereas your lordships in the morning have deprived me of my freehold, and have struck my name off the Buttery book, I do protest against your proceedings as illegal, unjust, and null; and do appeal to our sovereign lord the king in his courts of justice.' Upon which there was a great hum, which put the commissioners out of all patience, who had before treated us with all imaginable candour and gentleness, saying that they would never suffer the king's authority to be thus affronted, and ordered the guilty persons to be apprehended; but the crowd being great and the noise coming from behind, no one could be discovered. The chief justice Wright saying that he would de-

fend the king's authority while he had blood in his body, and then telling Dr. Hough he was the cause of this rude behaviour, by his popular protest which he might have made in the morning, that he had broken the king's peace, that now he had brought in the civil power over us, that if need were he would use the military, that he would make him answer this affront done to the king's authority in the King's-bench court, and therefore require sureties for his appearance there the following term, and for his good behaviour, Mr. R. Clerke of Eyfley, and Mr. Holden fellow of the college, were bound in 500*l.* each, and himself in 1,000*l.*; all the fellows disowned the great rudeness, and proferred their oaths upon it. Then a letter was shewed to Dr. Pudsey, written by him in the name of the society in August, being an answer to a letter of the earl of Sunderland about the king's mandate for the admission of the bishop of Oxford president, which he owned, and all who were then present at the writing of it, that the president's place was full, that they could not admit any other, further adding, that they could not depart from that letter. The court then adjourned till Tuesday morning, saying that they would give us time till then to consider, and that if upon better advice and deliberation the fellows would retract, they would not surprize them.

Tuesday the 25th October. The Lord Chief Justice had in a former meeting given it for law, that the king's mandate for another, had in it the force of an inhibition (which was the clear judgment and declaration of Dr. Aylworth, chancellor of the diocese of Oxford, in a discourse upon this point in my chamber not long before) Dr. Stafford offered a paper by way of answer, which only he and Dr. Fairfax subscribed, all the rest of the fellows who withdrew into the hall to consider of it, and subscribe it if they thought fit, by the order of the commissioners, refusing to put their names to it. Afterwards Dr. Stafford, being made sensible of the dangerous consequences of that paper, desired that he might withdraw it, which the court at last granted, though not without some difficulty, Dr. Hedges the king's advocate interposing. Soon after the bishop of Oxford's proxy was read, and the king's letters mandatory to the visitors for his admission into the presidentship, the first asked Dr. Pudsey whether he would install the bishop of Oxford president by proxy, his chaplain Mr. Wickins appearing for him, he said he would not engage in it. I being the next senior then present, the bishop of Chester asked me the same question. I read my answer which I had put down in my almanack just before, and which I held in my hand, easily foreseeing what the commissioners aimed at, by their foregoing procedure, that it might not be mistaken or misreported, and it was word for word this :

' My Lords Commissioners, I answer with all humble and dutiful submission to the king's majesty's authority and your lordships visita-

' torial power, that it is not in my power to do this ; your lordships, who have deprived Dr. Hough, and have declared the bishop of Oxford President, may install him : this method being altogether new and extraordinary I cannot be satisfied how I can or ought to be the executioner of your lordship's sentence ; besides I beg leave to propose a short case to your lordships, Whether, and how I can install or give possession without being impowered and authorized by a rule out of the high court of Chancery or King's-bench for my security if there were nothing of conscience in the case.' The chief justice answered me that they acting by authority under the broad seal had the power of those courts, I humbly begged their pardon and demurred. Upon this immediately the bishop of Chester said, Come let us adjourn to the chappel presently, and accordingly they went and installed Mr. Wickins in the president's seat, who took the oath of the founder and the oaths of allegiance and supremacy ; all of us in this interval walking in the cloysters, except Mr. Charnock, who was the only person, as I found upon enquiry, present at the installation. Then they went to the president's lodgings which they found locked, upon which they returned to the common room, ordering in the mean while one of their officers to go for a smith to break open the door, the smith coming, the scholars of which the cloysters were full told him that if he did it, he would be hanged, and so drove him thence towards the back gate. The commissioners returning to the common room, proposed this question to every fellow, will you submit to the bishop of Oxford now installed president by virtue of the king's mandate. Dr. Fairfax refused, and said that he neither would nor could. Dr. Pudsey said that he would submit. My Answer was word for word this, which I had written down in my little note book and read :

' My Lords Commissioners ;

' I own from my heart and acknowledge the king's supremacy. I do now and always will pay all dutifull and humble obedience to his majesty's authority, and this out of a principle of conscience and loyalty, as becomes a priest of the Catholic and Apostolic Church of England established by law. I have made no exception to the legality of your lordship's commission nor to the exercise of it in this present visitation. I am ready and willing to obey in *licitis et honestis* the president whom the king has been pleased to constitute president whenever he shall come and reside in the college.'

Dr. Bayley desired time till the afternoon, and so did the rest to give in their answer, which the court readily allowed, and so adjourned.

Then the Commissioners went themselves to the door of the lodging, and having a smith with them forced it open, entered, and gave Mr. Wickins possession for the bishop of Ox-

ford, and from thence went to their respective lodgings.

Tuesday afternoon, the other fellows gave in their answer in common (except one or two which gave in theirs apart) which Dr. Pudsey also subscribed, wherein they say that they would submit to the bishop of Oxford, then installed President, as far as is lawful and agreeable to the statutes of the college, and no way prejudicial to the right and title of Dr. Hough, which last clause they thought to omit at last, being made acquainted by the chief justice and baron Jenner that they were superfluous, and that their submission would not prejudice Dr. Hough's right and title in the least. The same submission was made by the demyes, chaplains, schoolmasters, stewards, organist, clerks, choristers, and servants of the college. All being asked, whether they would submit, promised obedience to the bishop of Oxford as president, the under porter only excepted, who refused. This done, we were bid to withdraw. Soon after Dr. Fairfax was called in by himself, and immediately all of us. Dr. Fairfax denying the authority of the court and refusing to submit to the new President, the commissioners admonished him to depart the college peaceably, and expressing a great deal of sorrow, that he should thus ruin himself by his obstinacy, they deprived him of his fellowship and struck his name out of the buttry book. We were ordered to bring in an account of what lands, gifts and provisions for hospitality which were given by our founders and benefactors, and how they were employed, and so they adjourned to next day.

Wednesday morning, October 26, we gave in a paper relating to our benefactors, and to our own beneficence and charity to the poor as yearly sums, besides what was given upon several emergencies. But besides this common paper which I subscribed, I drew up the following paper, subscribed it, and presented it to the commissioners:

"As to your lordships' question proposed whether we have applyed the revenue of any land or other estate given for hospitality to private uses, we cannot for want of time give your lordships that satisfactory and full account, which we desire and shall do hereafter, when we shall look over the evidences of the estate of the college, of which we are but the fructuaries, and other muniments locked up in the tower. As to our hospitality in general,

"1. The bursars table is the place where not only our tenants but strangers, according to their quality, are entertained: there being a daily allowance made by the college for that purpose, which when scanty and not sufficient for a suitable entertainment, it is left in many cases to the discretion of the bursars to add what they shall judge fit and becoming. But besides this:

"2. It is our constant practice and custom at the end of the year to give sums of money away to the poor, which are greater or less ac-

VOL. XII.

ording to the surplusage of our corn-rents that year.

"3. The bursars are empowered to give money away to the poor upon the greater and more solemn festivals of the year.

"4. Oftentimes upon great emergencies, such as were the briefs for re-edifying the town of Northampton, for the rebuilding the cathedral of St. Paul's, London, for the relief of the French Protestants, besides other briefs for fires, for the redemption of captives and the like, we give considerable sums of money as well out of the public stock as out of our private purses.

"As for turning the remaining part of the Hospital of St. John about 20 years since (for this it seems had been misrepresented, and about which they desired satisfaction) into lodging chambers, which were very much wanting to the Fellows. But that alteration was not made without consulting the bishop of Winton, our local Visitor, and without having obtained his lordship's consent. There having been no use as we could ever learn from our predecessors, of those rooms, and as we may seem not without good grounds to believe since the time that pilgrimages were left off and disused here in England.

"But, my lords, if upon research (which we will endeavour to make with all possible diligence), we shall find any obligation lying upon us to use larger measures of hospitality, we assure your lordships we will be just to that obligation, and for the future will fully satisfy it, as we will any other point of duty which is incumbent upon us as Fellows of the College. This we hope will satisfy your lordships at present, and we humbly desire your lordships to make, as we are assured your lordships will do, a fair and candid interpretation of this answer to his sacred majesty, whom God bless with long life and an happy and glorious reign. THOMAS SMITH, D. D."

I added only by way of explanation, what I have learned from tradition, that those rooms of the hospital now turned into chambers had not been used as they were first designed since king Henry the 8th's time, and that they had been for the reception of pilgrims travelling out of Wales to Thomas Becket's shrine at Canterbury, who was the great saint and martyr of the Roman Church, but by the laws of England, a traitor against his sovereign liege lord king Henry 2nd.

With these papers the Commissioners professed themselves satisfied.

Dr. Rodgers, late organist, had a hearing upon his Petition to be restored, which Dr. Stafford managed and satisfied. The Commissioners ordered us to continue to pay him 30*l.* per annum, which we promised to allow him during his life when he was dismissed, which we never refused to do. Upon this complaint I told Dr. Stafford that now was a proper time to inform the Commissioners of a

F

bed maker's servant being got with child about two or three years before, and that I would make complaint of it in order to have the guilty person punished according to his demerit, and for the fuller discovery of that wickedness. But he would know nothing of it, and desired me to desist, the offence being scandalous, and it would make a great noise and bring a disgrace upon the College. The court adjourned till the next day.

Thursday, Oct. 27, The Court being sat, the steward gave in an account of our fines for the two last years. There was a Petition of William Fey, late chorister, and now a trooper in the earl of Peterborough's regiment, which was delivered to them, as they said; by captain Lawson, about money he pretended due to him from the college; but it was fully and abundantly answered to their lordships satisfaction. They asked us if we had any thing to propose, wherein they might serve us to redress it; which no man speaking to, they adjourned till five in the afternoon, at which time they said they would not detain us above a quarter of an hour.

Thursday afternoon, five o'clock, only the bishop of Chester and baron Jenner came, and told us that they were in hourly expectation of an express from London; and so adjourned immediately to the next day, seven o'clock in the morning.

Friday, Oct. 28. The commissioners told us that that morning they had received an express from London, wherein the king required that the fellows should acknowledge their disobedience in contesting his authority; and therefore they ordered that the fellows should make this acknowledgement, in order to the king's satisfaction, in a writing under their hands, which they would leave them to draw up and word: how that they were sorry that they had displeased his majesty and disobeyed him, and to that purpose, and therefore we were bid to withdraw; and they said that if we would Mr. Tucker should assist us, adding moreover, that we understood very well how to draw up an address, and that they would leave it wholly to ourselves. In this affair I was wholly unconcerned, as to any kind of obligation lying upon me to joyn in such an address, who had been absent from the college with statutable leave, during the heat of the contest: (the fellows refusing my advice for deferring the election till the king had been petitioned a second time: which method, if it had been followed, had prevented all the troubles which fell upon the college). The Commissioners, upon my saying thus much, acknowledged that I was not obliged; nor was a subscription required of me, as is subtilly but most falsely suggested in the Relation, p. 57 & 58, who was so far from being prest, as is there said, that he was not so much as spoken to. But however, after some little demur, I went up to the hall where the fellows were retired, to discourse with several of them, and to interpose my advice. They told me they

were required to acknowledge themselves disobedient, that is rogues, villains, and other such like terms they used, which they would never do, and were divided about a form. I told Dr. Bayley and others that they might do it in such a form as might neither displease the commissioners, nor prejudice themselves: as that, We are heartily sorry to have incurred your majesty's displeasure, and that if in the management of this cause we have done any thing amiss tending that way, we humbly beg your majesty's pardon, or to this purpose. I said moreover, that I would not accuse them, but I was to defend myself; that in the management of the best cause, there might be misbehaviour and miscarriage: and therefore I beg'd of them for God's sake very earnestly, that they would consider what they had to do. But I not prevailing, they drew up a paper, which being subscribed, they went down with it to the common room to present it to the commissioners. As soon as it was read, the commissioners said it was not a paper fit to be offered; and that they had offered more in a former address, which was read; and that it was not agreeable but directly repugnant to their submission made on Tuesday; the bishop of Chester adding, that it was 'protestatio contra factum.' Dr. Bailey desired to explain himself as to that paper, that by the word submit, they only meant that they would not oppose; and that as to owning the bishop of Oxford president, they had no such design or meaning. This appeared to me matter of astonishment; for that the submission was made after the commissioners had installed him.

Reflecting upon this interpretation, I have said several times to them, If we may fasten an interpretation upon words, contrary to their plain obvious and common sense and meaning, let us henceforward cease to condemn and preach against the Jesuitical wicked doctrine of equivocation and mental reservation: and that if we now thought ourselves bound to observe the founder's statutes *ad literam* in every particular, and that we could not be dispensed with from them, as we had been dispensed with formerly in divers instances and especially about elections, we ought to take shame to ourselves by a public acknowledgment that we have lain so long under those fatal errors, and do penance for our manifest and wilful perjuries.

After the general submission made by all the fellows, except Dr. Fairfax, and all the college besides, except the under-porter, both of whom were expelled, I observed that there was great dissatisfaction taken by several at this their compliance, blaming them for leaving Dr. Fairfax in the lurch; besides they were piqued by Mr. Obadiah Walker and his parties upbraiding them, that they durst not stand it out, and it being commonly said in the town by the ordinary people, 'here is your Magdalen College conscience,' besides other motives, they thought fit to evacuate their sub-

mission by this equivocal interpretation. Then the question was put in these very words to those only who had subscribed the paper.

Will you submit to the bishop of Oxford as president 'in rebus licitis et honestis?'

But they refused, most of them saying that they were of Dr. Bailey's judgment. Dr. Stafford at first desired time to consider, and said, that if he did not obey the president he was liable to be punished for his disobedience according to the statute. Mr. Craddock said that he would obey the bishop of Oxford as president, when Dr. Hough should be found to be legally divested of the presidentship. Mr. Fulham in his heat said, that the bishop of Oxford had not been legally invested president, and that it ought to have been done by a *posse comitatus*. This the chief justice highly resented, and told him that the law was not his profession, and several other words to that purpose, as indeed most of them had something or other to say, when they gave in their answer *viva voce* to the question proposed, which I took little notice of, as being trivial. Soon after we were bid to withdraw.

When we were called in, having discoursed Mr. Fulham in the cloyster about his unadvised words, I desired of the commissioners that they would permit Mr. Fulham to retract some words he let fall hastily a little before, and that he might have leave to explain himself, which he did; but they answered that the affront to the king's authority was public: and so the bishop of Chester, who before had called for the buttery book, as I thought to strike his name out and with design to expel him, only suspended him from the profits of his fellowship for his opprobrious language and contempt of the king's authority.

Then they adjourned the court to Wednesday Nov. 16, strictly ordering the fellows then present to give notice to such, as were absent, to appear there before them that day.

Tuesday, Nov. 15, the same commissioners came to town, being brought in by three troops of horse, and were lodged in the college.

That night I was sent for to the lodgings by the bishop of Oxford, not knowing in the least that the commissioners were with him (forbearing to visit him above once or twice at most upon his taking possession of the lodgings, notwithstanding our intimate friendship many years before: which I then chiefly waved to avoid all possible umbrage of me) I was surprized at the sight of them, where we had but little discourse and that of indifferent things. Only before I took my leave, baron Jenner took me aside and asked me very seriously, Dr. I pray tell me, when you delivered the petition of the college to my lord president; I told him upon the faith of an honest man and a Christian that it was on Sunday the 10th of April. Afterwards the bishop of Chester invited me to his chamber, and asked me the same question, which I answered word for word as before I did to baron Jenner; He further asked when I had my answer, I told him on Wednesday the

13th of April, and that I would attest it upon oath if there was any doubt or denial of it.

This brought into my mind what the Vice-chancellor Dr. Ironside told me that in a discourse the king was pleased to have with him, when he was in Oxford, in September about our college, his majesty aggravated the undutifulness and rudeness of the fellows in not petitioning him and representing our case to him before the election. The Vice-chancellor interposing said that he had heard that we had done it: the king answered; Ay, after the election was over. This seemed demonstration, that the earl of Sunderland did not deliver our petition in good time, and which I concluded fully was the reason, why baron Jenner and the bishop of Chester were so inquisitive to know the exact time from me.

The bishop of Chester told me that I had a great enemy in the cabinet council, called just before they came away. I asked him who were present, he said the lord chancellor, the lord president, the lord privy seal, the marquis of Powis, father Peter, the earl of Castlemain, and I think he said bishop Leybourn. He would not tell me who the lord was, but left me to guess, as I did easily. But he said that the king was pleased after all to say that he was fully satisfied as to my behaviour.

In the interval between the Commissioners going away and return, I was soon convinced that the fellows were encouraged to persist in their opposition to the king by several great men at London; that they should be taken care of, in case that they were expelled, that they would be looked upon as Confessors for the Protestant religion, and such like plausible arguments, with which they were wrought upon. So that it was very easy to foresee that upon their non-submission, the commissioners came with full power to expell them.

Wednesday, Nov. 16. The commissioners met in the common room, and the buttery book being sent for, afterward upon reading the king's mandate for the admission of Mr. Wm. Joyner, who had been fellow of the college about 40 years before, and lost his fellowship by turning Papist, and Mr. Job Allibon, brother to the judge of that name, they were admitted, and their names registered; both of them taking only the oath required by the founder.

The names of all the fellows were called over, and certificates were produced in behalf of several of the absent fellows, which were read and allowed. Dr. Younger was excused, upon the account of his attendance upon the princess of Denmark. The names of the rest who had not taken the like care to get themselves excused were noted down.

Soon after the bishop of Chester made a long speech, recapitulating the whole affair.

All being ordered to withdraw but the fellows, the commissioners required such of them, and only such as had contended with the king, (for I was not so much as spoken to, much less

pressed, as in the printed pamphlet, entitled, "An Impartial Relation of the whole Proceedings against St. Mary Magdalen College in Oxford," which is very partial and faulty in several particulars relating to me, is basely and falsely suggested, p. 37, 38,) to subscribe the following paper:

'To the King's most excellent Majesty:

'The humble Petition and Submission of the Fellows of St. Mary Magdalen College in the University of Oxon: whose names are subscribed.'

[Here occurs the Petition as in the preceding Report, excepting two immaterial deviations.]

This being read, every one of the concerned persons was asked in his turn, whether he would sign the submission or no.

After some little altercation, they were bid to withdraw, every one in the order he stood in, as they refused.

Soon after the doors were opened, and their names having been struck out of the buttery book, the sentence of expulsion was read publicly; against which several of them protested in a paper subscribed by them to which the rest assented. An instrument of their expulsion was about noon affixed upon the great gate of the college.

Upon the fellows final withdrawing, the commissioners proceeded to admit several fellows and demyes by virtue of the king's mandate.

After dinner the commissioners went out of town for London.

After the expulsion of my colleagues, which they had brought upon themselves, I being extremely concerned for them, resolved in that very minute to go to London, and live there; and to begin my journey the next morning, Thursday, but no coach going from Oxford on that day, I was forced to defer it till Friday morning.

On Friday morning, Nov. 18th, I set forward in the coach for London, and staid there all that winter, and part of the following year, till I was expelled from my fellowship by Bishop the then president and popish fellow: and went down to Oxon a few days after to remove my books, bedding, and the other furniture of my chamber.

Upon my coming to town, I found the whole transaction of the affair relating to the college generally condemned, the king arraigned as guilty of arbitrary government in turning men out of their freeholds, the commissioners loaded with calumnies for executing the king's pleasure, and acting as they said against law, in defence of a prerogative, which these revilers would not acknowledge due to the crown, and myself bespattered with horrible, scandalous, and diabolical reflections, as that I was a Papist, or at least would soon declare myself such; that I had perjuriously violated my founder's statutes; and that by this compliance I was making my court to get preferment, and such like stuff. I confess it troubled me extremely

to be thus calumniated, knowing that in the whole affair I acted according to my judgment and conscience, upon which I did not choose to rely wholly, though I might have done it safely, knowing from the registers of the college, what had been done in the like cases by our predecessors: and especially in Dr. Walter Haddon's case, who was a lay-gentleman, and bred up in the University of Cambridge in the time of king Edward the 6th; in that of Dr. Bond under queen Elizabeth; of Dr. Oliver who was recommended by king Charles the 1st, (though the king then in Oxford was assured that the election would light neither upon Dr. Oliver or another of his majesty's chaplains, the king saying, as I have been most credibly informed, that he would send his letters however) and in those of Dr. Pierse and Dr. Clerke, at which latter I was present, and in the elections and admissions of fellows (to the formalities of which we were as much obliged by statute) whenever the king thought fit to interpose his royal authority: besides, I say, not relying upon my own understanding, I consulted both divines and civilians as to my behaviour in this perplexed affair, whose judgment, which could be no way biassed, agreed with mine. Hereupon to do myself right, and to vindicate my injured fame and credit, I found myself obliged to give a particular relation of my behaviour in the whole transaction so far as I was concerned, either at the election or visitation, which I sent to my friend Wm. Lloyd lord bishop of St. Asaph in a letter dated Nov. 24, within less than a week after my coming to town, which satisfied his lordship, who, as much as he disliked the exercise of the king's visitatorial power at that time and the behaviour of the commissioners for ecclesiastical affairs and for visiting the Universities either at London or Oxford, did me the justice to vindicate me, in the midst of all the clamours raised upon me, (as did several other persons) whenever a discourse happened to be started about me. I finding that the case was either through ignorance misunderstood, or through malice and design perverted, to run down the king and his authority-royal, in interposing in college elections, and that not one in a thousand has a right notion of it, designed to publish that letter to satisfy my friends, that I was not so black a criminal, as some of my maligners represented me to be, and therefore consulted and advised with bishop Lloyd, whether I ought not to lay open the whole affair to the view of the world, at least to publish that letter written to him, which he would by no means give way to, or advise me to do, adding among other reasons, that thereby I should but gratify the Jesuits; and this afterwards was the opinion of Dr. T. Tennison: who in bishop Lloyd's absence and by his particular desire, I now and then consulted upon some emerging difficulty. I can justly say it, and I appeal to God Almighty the searcher of all hearts, that in the whole course of my life, in matters relating to the public, I have endeavoured to dis-

charge a good conscience; and that the grace of God assisting me, I have abhorred, and the same grace still assisting me, shall continue to abhor, a wilful and designed contradicting the lights and directions of my conscience, or doing any thing contrary to it, though it were to gain the best preferment in the church, or to save my life: And as to the other crimination of my being a Papist, or would at least become such, I need only appeal to all who know me intimately both before and since, and to the several theological writings which I have published in Latin and English, in which I have defended the doctrine of the church of England against the Papists, to render it absurd, false and incredible. It was a grievous affliction to be so unworthily reproached by my brethren of the clergy, one of whom broke out in a coffee-house into scurrilous language against me, such as was fitter for a rude, ill-bred, and hair-brained porter or carman to use, than a scholar, gentleman, or priest. But I have lived to see this man especially, (with several other of my severe censurers) notwithstanding their pretended zeal at the time in the defence of the church of England against Popery (which certainly is the duty of every honest and conscientious clergyman of this church) renounce his oaths, faith, declarations, and formerly avowed principles, and swear allegiance to an usurper, and justify all the villainies of the late revolution.

Collections of sums of money were not long afterwards made both at London and in the country, for the expelled fellows of Magdalen college: and the news of their expulsion was sent over into Holland, with a great many horrible circumstances to aggravate the injustice of the king's proceedings against them, which affected the princess of Orange in such a manner, as that she sent over 200*l.* to be distributed among them, as one of the fellows afterwards told me.

That night after having sent away my letter by a sure hand to bishop Lloyd in the morning, a gentleman came to me to my lodging telling me, that the king hearing that I was in town, commanded me to come to his levee the next morning, which was extremely surprising to me.

Friday morning, November 25, I went to Whitehall, the king was then under the barber's hand, several lords and gentlemen attending as is usual; soon after the king admitted me to the honour of kissing his hand, and called me into his closet.

The king said to me, that he had heard well of me, and that I was a loyal and honest man, I answered that I had endeavoured to do my duty to his majesty, as became a loyal and an honest man, for which I suffered a thousand reproaches. The king bid me not to value them, and then he was pleased to tell me, that he had had a letter from the bishop of Oxford, that the demyes were mutinous. I said that I had endeavoured to satisfy some of them, but I feared they were not to be wrought upon.

The king was pleased to add these very words: The college has been mutinous and factious ever since my brother was restored. Some little discourse happened about my having lived some time at Constantinople, and I thought fit to acquaint the king that of late I had not been constantly resident in the college, but lived in London, which I thought proper to say, because I had resolved to go down no more, while things continued in this disorderly condition. After this short stay, the king said, 'Doctor, I thank you, I will stand by them who stand by me. You shall find it so:' or words to that purpose. I most humbly thanked his majesty, and was dismissed. When I returned to my lodgings, which I did immediately, I thought fit to put down the above written discourse while it was fresh in my memory. Notwithstanding the king's gracious intentions toward me, I never made any kind of application to his majesty either by Protestant or Romanist, and at that time dreaded preferment as much as others were ambitious of it, and courted it, and scorned to make a visit to my lord Sunderland, who to make his court the better, had renounced his religion, and was *premier ministre*, much more to the Jesuit Petres, whose face I never saw but once *en passant*, though invited thereunto by one, who had a considerable interest in them both. For though I might have pretended with some tolerable kind of allowance to a prebend in the church of Windsor, which king Charles was pleased to promise me, or to a prebend in Westminster, for which archbishop Sandcroft, of his own accord, without my request or suggestion, told me that he would speak to the king (king James) in my behalf. His grace thinking it most agreeable for me to live in London, as well as some others, who I saw daily advanced to great dignities in the church; yet, after that the troubles of the college had happened, I made it my business and endeavour to avoid it, and I thanked God heartily, that no preferment was forced upon me. So much do I prefer the credit and reputation of my having acted according to my judgment in the affair of the college, before the best preferment which fell afterward in the king's gift, though it had been the bishopric of Oxon, which not long after was vacant by the death of bishop Parker.

Saturday morning, Dec. 31, 1687, I went to see the bishop of Chester at his lodgings, where I found Mr. Brooks, the bishop of Oxford's secretary, just got in before me.

The bishop told me that he was just returned from Whitehall, and that he had been with the king to recommend one Dr. Vavassor, a physician, with one arm, who upon the death of his wife had resolved to go into a monastery, but that his friends advised him to get a fellowship in Magdalen college. The king referred him to father Peters, who told him that the warrant was full, which was for twelve, all Papists; but that he might be in the next. I asked then what would become of the college chappel;

the bishop of Chester said, that he had spoken to bishop Leyburn about it, that they (the Papists) should not have the use of the chappel, there being chambers enough to make a chappel for their use, and that otherwise this would look like turning the Protestants out of it, and that bishop Leybourn answered him, that he was of that mind, and had declared as much; adding, that his advice signified nothing, meaning as he said, that all was done by father Peters. Then bishop Cartwright told me, that he believed the chappel should be made use of alternation. Upon this I turned to Mr. Brooks and I said, I hope the bishop of Oxon is of the church of England, notwithstanding his book, which was then just published, and was universally decried, as written in favour of the Papists, and I hope also, that he will never give up the chapel to the uses of the Roman worship, and I pray tell him from me, that I have served the king as far as my conscience and allegiance will permit, that I could go no further, that if I came down to the college, I would keep up the service of the church of England in the chappel, at the usual hours, and that we had legal possession of it, of which we could not be deprived. I asked the bishop what will become of the Protestants at last? He answered me, that they would be preferred. Preferred? said I, well my lord, I have served the king as far as I can; but withal, I am not only content to lose my fellowship, but my life too, in defence of the church of England as established by law. So the discourse fell.

I had heard some while after my coming to London, that several masters of arts in Oxon were very desirous of getting fellowships in the college, making not any scruple in the least of succeeding in the vacant places: and I was fully satisfied of the truth of the report, some of them coming up afterwards to try their interest here in order to procure mandates for their admission. But all the recommendation either of bishop Parker or bishop Cartwright could not prevail in their behalf: and father Peters, who had the management of the affair, would not give way to it, which was looked upon as a strange kind of politic in him: unless it was done designedly by the person who influenced him as well as the public councils too much, lord S——d, to exasperate and embarrass the king's affairs, and render him more odious to his Protestant subjects; many of whom now began to be alarmed with the report, which upon this refusal was soon after confirmed by the sending down a mandate for 12 persons, all of the Roman communion, that Magdalen college was to be turned into a Popish seminary. This helped to blow the coals, and kindled that jealousy in the minds of several (who before upon better information thought the king injured by the fellows, and justly provoked to proceed to that severity against them,) which afterwards broke out into factious discontents against his person and government. Upon the opening of this new scene, I was more and more confirmed in

the resolution I had taken when I left Oxford, just after the visitation, not to return; and was very indifferent what became of my fellowship. Mr. Charnock, whom they had made vice-president, sent to me a letter dated January 19th, citing me to come down; which citation I slighted: and did not think fit to answer the foolish letter; and left them to proceed against me as they pleased.

Bishop Parker dying, and Dr. Gifford titular Bishop of Madaura, succeeding in the presidency, and the college now filling apace with Popish priests and others of the Roman Communion, they seized wholly upon the College chappel for the uses of their religion without any regard to the Protestant fellows, and others not only servants but gown's-men of the foundation, who still kept their places and resided among them. Though I am not certain but that they said mass in the chappel. I had sometime or at least upon particular occasions the use of it, before bishop Parker dyed, who was herein, it may be, overruled, and made no opposition. But whether so, or otherwise, I cannot be positive, having received no full information. Hereupon I consulted bishop Lloyd of St. Asaph what I might or ought to do in this case, whether I should go down to Oxford and make use of the chapel in the way of the church of England and keep up our liturgick service there, which he told me was a good thought and design which God had inspired me with. But however we both thought it best to advise with an able lawyer or two; whereupon he immediately wrote a letter to sir John Holt, recommending me and my case to him, which the bishop had stated. Upon my going to sir John Holt with my letter, which he read, he told me that it was a cause in which the king was concerned, that he was the king's serjeant and of council for the king, and so could not be retained by me, or give me any advice; and excused himself to me with a great deal of civility. This was about the 21 or 22 of May. Then I went to sir Francis Pemberton with the case, who refusing to take any fee of me, told me frankly that it was no way adviseable for me to go down to Oxon to demand the use of the chappel, that it would be to no purpose, that I would thereby incur the censure of folly, rashness and madness, that I would but run my head against the wall, and that upon their expelling me I could meet with no redress in Westminster-hall, and much to this purpose; so his advice was, that I should desist from this attempt. I went immediately to the bishop of St. Asaph, who was fully satisfied with the opinion and judgment of this greatly honest and greatly learned lawyer.

They expelled me the 3d of August, of which notice being given me by one of the college servants (for they all thought fit to keep their places except the underporter, who was expelled at the visitation) I went down to Oxon to remove my books and goods, taking a lodging in a private house. After 3 or 4 days stay I

returned to London, without taking any notice of any of the Popish fellows.

October 3d, 1688. The Archbishop of Canterbury with several other of the bishops addressed to the king, and laid before him several heads and articles of advice, among which part of the 3d was, that his majesty would graciously be pleased to restore the president and fellows of St. Mary Magdalen College in Oxon.

October 12th. The king sent for the bishop of Winchester, visitor of our College, and ordered him to settle the society regularly and statutably. This the bishop upon my meeting with him, acquainted me with, and ordered me to meet him at Whitehall, next morning, which I did accordingly, just coming with some other bishops from the king. He took me down with him from the room adjoining to the fane chamber, to my lord Sunderland's office, hoping to have had the warrant under the king's hand and seal ready. After about an hour's attendance, Mr. Bridgman came to the office and told him, that he should certainly have it in the afternoon. The bishop then desired me to go with him to the cock-pit, where he was going to wait upon the princess Ann, telling me by the way, that he would not stir from the court till he had obtained the warrant. Upon his going into the princess's chamber, he bid me come to him at his lodging in Old-palace-yard at 5 o'clock in the afternoon, and bring Dr. Younger along with me. We both came, and he shewed us the king's order, which was very full, of which I thought it no way becoming to desire him to give me leave to take a copy. I asked him when his lordship would restore us; he said that he could not pitch at that time upon a certain day; that he would make haste to Farnham, and that we should hear thence, but advising me that I would go down in the mean while to secure the College-plate, gold in the Tower, the registers and the like, least they might be imbezzled and taken away. I told him that in the circumstances I was then in, being actually dispossessed of my fellowship, I could not act but under his lordship's authority ratified by his episcopal seal, besides that upon leaving the college, I had made a vow to God that I would not enter in again, but when I was restored. Why, says he, this is in order to your restoration; so the discourse fell, and he went soon after, (I think the next day, for I did not see him afterward) to Farnham.

A citation was set up on the chappel-gate Oct. 16, warning the president, fellows, and all persons concerned to meet him there on the 2d November following, by which time the Popish fellows were ordered to be gone, which was a strain of the bishop's civility to them. My lord of Canterbury and several others of great quality hearing of this delay, signified their just displeasure at it, of which the bishop being sensible he hastens to Oxford on Saturday 20th of October, anticipating the time prescribed by him in his instrument almost a fortnight, upon

the security of which I staid in London. He was extremely blamed for deferring it, and might, if he had pleased, at first have gone directly to Oxford, where a great many of the fellows upon the news of the designed restoration were come already, and the king knew nothing, but that he had before this time obeyed his orders and restored the college. But thus it happened. The king designing to have on Monday the 22d October a great assembly of the lords bishops and personages of great quality, dignity and office to satisfy them, and by them the whole nation about the legitimacy of his son, the prince of Wales, and to obviate and confound the villainous and diabolical slander which was most maliciously spread abroad among the people by his implacable enemies which were then designing his overthrow and deposition, that it was a supposititious child, among others, took particular care that the bishop of Winchester, of whose loyalty at that time his majesty had a very good opinion, should be sent for to be present, and an express was sent to him accordingly to Farnham, but he being gone thence to Oxford, the express went after him, and delivered him the king's letter for his appearance in the council chamber on Monday. He not knowing the meaning and reason of the king's order delivered to him on Saturday night, was resolved to be gone early the next morning for London, without restoring the college. The fellows hearing of his intended sudden departure, went to St. John's college, where his lordship lodged, and importuned him to restore them that morning, that the whole might be done in an hour or two's time, and upon his refusing to comply with their earnest request, they used very rude expressions and behaviour toward him, which put my lord into a very grievous passion, and he made his coachman drive away, as some of the fellows told me.

On Monday about one o'clock in the afternoon, I spoke to him in the gallery at Whitehall, and asked his lordship when he would return to Oxford; he said on Wednesday. That afternoon I hired a couple of horses and a man, and went to Beaconsfield that night, and the next day to Oxford. The bishop got thither on Wednesday the 24th, and restored and resettled the college the next day in the morning, being the 25th.

In the pamphlets which were soon after published, giving an account of the revolution, and in order to the justification of the wickedness and villainy of it, this accidental delay of our being restored, which is wholly to be imputed to the bishop of Winchester, is horribly misrepresented, particularly by Mr. Bohun, and afterwards by Mr. Tirryl, and by the whole litter of envenomed lying scribblers, upon this idle absurd and forged pretence, that the post just before the bishop was sent for back, there came news "that the Dutch had on the 16th of the said month suffered much in a storm, and that they would not be able to sail 'till the Spring, and that therefore the

bishop of Winchester was commanded to desist, and the order given to him for restoring the college was revoked ;" which was a horrible lye, the king knowing nothing all the while but that the college had been restored before he sent for the bishop to be present in that august assembly, which was the only reason he was sent to, and not in the least to hinder or defeat the restoration of the college, as those villainous writers have most falsely and wickedly asserted.

After about four or five days stay the visitor returned to Farnham ; and at the same time I designed to go back to London, as having no bed or other furniture in my chamber, but chiefly to observe the humours and behaviour of the people, whose minds were swoln big with the expectation of a threatened invasion from the prince of Orange, and what the effect of it would be. But the president desired me to stay to help to settle the college, and make up the perplexed accounts of it, and accordingly I was prevailed upon. Upon a diligent search and inspection we found our writings and muniments safe, the old gold in the tower, which we counted, untouched and entire, the plate left as we left it, and nothing as I remember missing.

But after the visitor's departure, I quickly found that I was an eye-sore to several of my colleagues, who neither would or could it seems forgive me for my behaviour at the election and visitation, which cast such a reflection upon them. But the king's affairs now being more and more embroiled, they grew insolent, many of them having gotten the victory over the king, and the whole nation as they fancied on their side, and being thus got again into possession of the college, some of the junior fellows especially began to shew their malice and revenge upon me, taking occasion in the common room or in the cloysters to assault and abuse me with base dirty and opprobrious language for my not joining with them. All this I could easily have digested, till my old friend Mr. Dodwell acquainted me, that he had just then heard, that both president and fellows had endeavoured to prepossess the visitor, when lately in town, against me, with a design to expel me. This I confessed put me out of all patience, and filled me with equally great trouble and indignation, and made me almost resolve, whatever the effect of this barbarous usage might be, to quit the college (as the lesser evil of the two) where I had so many open maligners, and others who seemed to carry all things fair with me, and treated me outwardly with respect, thus secretly to envy me. Though I could not give an entire credit to Mr. Dodwell's information, especially as to what concerned the president, whose pretensions of respect and friendship were never greater, than at that time, and who, I hoped and believed, abhorred the very thought of being a party in that black design against me, yet I thought fit not to slight it, but the same day, 31st October, I wrote to my friend the

bishop of St. Asaph, it concerning me both in point of reputation and interest to prevent the mischief from falling upon me. The pretence was, that I had assisted Dr. Johnston in the composure of his book, intitled "the King's visitatorial power asserted, &c." he mentioned me there with honour, and citing my diary in 3 or 4 places. The case in short lies thus: I had made an acquaintance with that worthy honest and learned gentleman in the year 1671, at Pontefract in Yorkshire, where he then lived, and where I continued several days, taking a progress that summer with one of our Yorkshire fellows into the north parts of England, which in all my perambulations I had not seen before, and whose friends lived in that town. This acquaintance quickly grew up into a strict and dear friendship, which was afterwards kept up and maintained by a correspondence of letters during his stay in Yorkshire, and after his coming to live in London. The king being made acquainted with the loyalty and worth of this gentleman, and his great skill in the histories antiquities and laws of England, and his industrious researches into old records, gave him a considerable pension, to render the loss of his practice as a physician (and certainly a learned and judicious one) which he could not, if otherwise employed, attend with constancy and assiduity, less uneasy, and his chief province was to defend the rights and prerogatives of the crown, which were then attacked by several little writers with design to enflame the nation, under pretence of liberty and property, against the encroachments of arbitrary power. These calumnies were levelled against the king, not so much for his being of the Roman communion (though of this they made great advantage in order first to lessen him in the minds of the people and turn their minds against him, and afterwards to abdicate and dethrone him) as for his being a king; for they were the same with which they had aspersed the king his father of blessed memory, who died a martyr for the church of England. This gentleman, then, was to give a true and impartial Relation of the visitation of our college, and to that end had all the papers and register of the commissioners both at London and at Oxford, which related to that affair, put into his hand. He was so civil as to consult me about what concerned myself formerly as to matter of fact, I read several things out of my diary to him, and at the same time acquainted him particularly with what the lord chief justice said, as I had put it down in my note book, whose words I found in the prints and in common discourse to have been horribly perverted to his great prejudice and dishonour; and for the Doctor's farther satisfaction afterwards, I gave him a copy of a declaration or two I made which only concerned myself, which he has printed. But as to any matter of argument, statutes, customs, usages and practices of the college in other visitations, and the like, I never communicated to him one syllable or

gave him the least light. For if I designed it, things had been urged in several particulars with greater strength and authority. But he mentioning in the close of his book that a member of the college had written a tract upon that subject, it was presently concluded that I was the person, though when I challenged the Doctor upon it and desired him to acquaint me who that fellow was, he told me that it was Mr. Charnock, some of whose papers he had seen, whose name I told him he ought to have mentioned to take off all possible umbrage and suspicion from me. This silly and false suggestion was the only ground of the accusation secretly managed against me, which soon after fell, and I heard no more of it.

Wednesday, Dec. 5, 1688.

The lord Lovelace entered the town by Wadham college, and striking down Holywell and so in the road by Magdalen College Grove wall, past in at the east gate between 3 and 4 of the clock in the afternoon, where he was expected by the mayor aldermen and council with the recorder, who welcomed him with a speech, expressing their joy for his coming to them in this time of danger. He replied, sitting on his horse, that he was a member of their corporation, and was come to defend the Protestant religion and them. Upon which there were great huzzas and acclamations. There were about 300 horse with him, the gentlemen well mounted and armed, among them were the townsmen who went to meet him, and severall pityfull rascally fellows with no other arms but bills and staves. They rode up the length of the high street to Carfax and then dispersed themselves into several inns. To grace their entrance they brought in with them four prisoners, three Irishmen and a Popish priest, with their hands behind them, who rode foremost. That night to prevent a surprize the city train bands kept watch, and carts and waggons were thrown across Magdalen college bridge: the guard being placed at Magdalen college kitchen back gate: and so at all the other avenues of the town.

Thursday, Dec. 6. There was a meeting at the town council chamber, where it was agreed, that the Prince of Orange's Declaration should be read. At eleven o'clock there was a great appearance of horse at Carfax, where the Declaration was read by Mr. H. Mordant bare-headed on horseback.

On Thursday night there was a great alarm all the town over, and a report artificially spread, that the Irish were marching towards Oxford; which put the townsmen into great frights and fears: upon which they betook themselves to their arms, and an arch of Magdalen college bridge was broken down, so that people were ferryed over the Cherwell next day. Afterwards planks were laid over the chasm for the convenience of passengers and market people.

Friday, Dec. 7. Great numbers of people

VOL. XII.

appeared in the streets, and three companies of foot were formed under the command of Mr. Clark of Ifeley, alderman Combs, and Mr. Prince the town clerk.

The lord Lovelace and Mr. Finch of All Souls went up to the Schole's tower, whence they took away several drums and muskets, about 48. The Prince of Orange's said Declaration was read at Carfax.

A proposal was made in the chequer by the president about giving away the college plate for the use of P. O. He afterwards told me that this design was first projected by the vice chancellor and one or two more of Christ's church, whom he named to me, and that it was told him that Magdalen college had most reason so to do; because they owed their restoration to the Prince of Orange's coming. But many being unwilling no resolution was taken. The president also told me (and Dr. Mill afterwards confirmed to me) that he knew nothing of Mr. Finch's being sent to the P. O. at Sherborne to invite him to Oxford, and to make him an overture of the college plate, and that it was wholly concerted and projected by the same persons.

Searches made that day in several Papists houses for arms.

Monday morning, Dec. 10. A convocation was called by the vice chancellor, and Mr. He-neage Finch and sir Thomas Clargis chosen burgesses of the university for the convention.

Afternoon. The duke of Ormond came to town, the vice chancellor, doctors and masters waiting upon him in their habit at All Souls college where he lodged, and the public orator making a speech. Several other lords and gentlemen also came into town the same day.

Tuesday, Dec. 11. The earl of Abingdon came to Oxford, being met below Christ's church by the mayor, aldermen, and common council in their formalities, with the companies of mercers, tailors and glovers, with their streamers.

Wednesday, Dec. 12. Prince George came to town, and was waited upon at Christ's Church by the vice chancellor and heads of houses.

An association paper was signed by the vice chancellor, several heads of the colleges, and some of the Canons of Christ church to stand by the P. of O. But Dr. Turner, Dr. Adams, Dr. Bury, Dr. Hatton, Dr. Mills, Dr. South, &c. refused to subscribe it, as I was told by one of the non subscribers.

Upon the news of the king's leaving London the Prince of O. marched from Abingdon to Dorchester and so to Wallingford, where he lies this night.

Thursday, Dec. 13. They left off praying for the prince of Wales in the college chappel.

The night before or this morning the P. of O. wrote a letter to the duke of Ormond acquainting him, that he was obliged to march up to London, and so was hindered from visiting Oxford, as he designed, and that after things were settled he would come hither and see the university.

G

This night sir John Lanier's regiment of horse having basely deserted the king came to town (Oxford.)

Saturday Dec. 15. The princess Anne came to town (Oxford) and went directly to Christ's church. First, in the head of a great party of horse, both gentlemen and militia-men of 2 or 3 counties, which they had gathered, was the earl of Northampton. Next, before the coach of the princess, the bishop of London, leading a troop of noblemen and gentlemen, he in a blue coat, jack boots, pistols at his saddle bow with a naked sword in his hand.* The motto of the colours of this troop embroidered in letters of gold: 'Nolumus leges Angliæ mutari.'

About an hour after the chancellor, vice chancellor, and Drs. in their scarlet gowns who were ready there to receive her, were admitted. The vice chancellor made a speech, saying among other things, 'that never was there an invasion more just, and never more successful, that there was a conquest without blood, a victory without insulting, I might say almost without rejoicing; that the Church of England has saved the king against his will,' and such like stuff, besides more indecent reflections on the birth of the prince of Wales.

A flattering letter soon after was sent by the university of Oxford to the prince of O. wherein among other high strains a gentleman who heard it read, told me this was one: *Cæsare major antequam venit vicit.*

Here I left off putting down what farther happened at Oxon, our whole discourse being taken up and our thoughts wholly employed about the amazing transactions of London, where upon the king's forced departure a second time a new scene opened.

Reflecting upon the horrible defection of these very heads of colleges and others who had been so zealous for the passing of the famous Decretum† in a full convocation 21st July 1683, and now renouncing that doctrine and their loyalty, and entering into a confederation or association in defence of the P. of O. who came to pull the king his uncle and father-in-law out of his throne and usurp his crown: I soon after vented my just indignation against such baseness and wickedness in these following lines:

In Associationem a quibusdam Academia Oxoniensis doctoribus initam.

*Nuper sacrilegos infandi schismatis ausus
Atq; Monarchomachos percudit Oxonia
Oxonia, antiquæ fidei veri; magistra
Regibus effuso sanguine fida suis
Unde hæc fluxa fides? hæc inconstantia morum?
Scottorum fædus sic revocare decet?*

* Thus it appears, that in this instance, I have erroneously supposed Dalrymple to have written without any other authority than his own invention. See vol. 11, p. 1130.

† See this Decretum in 3 Kennett, 2d edit. pp. 411, et seq.

*Fallimur en, matrem non hæc infamia tangit
Dediscunt pauci, quam docet illa, fidem.**

The accounts of the college being pretty well stated and settled, I obtained leave to go to London, which was about the middle of January.

I soon after went to visit my friend lord viscount Preston, and to ask his opinion and advice about my going to wait upon the king in France. After some discourse upon this head, he concluded that it was best for me to stay in London, and that I might do the king better service here than by going over the water. So fully acquiescing in his lordship's judgment I laid aside all thoughts of that voyage, and considered with myself upon what methods I should enter to do that little service I was able. The convention being opened, I went every day to Westminster, to talk with several noblemen and gentlemen with whom I had the honor to be acquainted, to persuade them to use their utmost endeavour to hinder the cursed abdication, which was then visibly designed and addressed to them, in order to the inviting the king back into England, from whence he had been driven away. For my active behaviour herein and for my local zeal in many rencounters in the Court of Requests, I was taken notice of, and threatened to be complained of and punished. Besides the warm contests which I had with several bishops and others of the clergy, who partly through mistaken principles, partly through fear, that they might not lose their preferments in the church, were now giving up themselves into the hands of the P. of O. in order, as some of them idly and foolishly talked, to the better securing the Church of England from Popery, and maintaining the Protestant interest in Holland and other countries beyond sea.

Spending the coronation day with my relations in the City, the next day the 12th of April, I went in the flying coach to Oxon, being to preach before the University at St. Mary's on the Sunday following, using in my prayer the form of words in the prayer appointed to be read in the communion service, 'that God would save and defend all Christian kings, princes and governors, and especially thy servant our king.' I thought it became me, foreseeing that it would be the last time that I should appear in that pulpit, to preach a plain and practical sermon, it being what I had preached several years before at Constantinople,

* When at the Revolution the famous Oxford decree, of July 21, 1683, (proposed by Dr. Jane, Regius Professor of Divinity) was tacitly condemned by the maker and chief promoters of it, who privately ordered the printed copies of it to be taken away from the halls and other public places where they had before hung in triumph, it occasioned, says Kennett, some reflections and pieces of wit; among others this distich:

*Cum fronti sit nulla fides ut carmina dicunt;
Cur tibi bifronti, JANE sit ulla fides?*

as to the heads of doctrine, with some few additions, suited in the present state of affairs, which was printed soon after the news came of the dismal earthquake at Jamaica, under the title of

A Discourse concerning Divine Providence in relation to National Judgments. London, 1693.

But the Bishop of London's chaplain would not be prevailed upon by the bookseller his intimate friend to let it pass entire: but before he would licence it, he struck out two or three passages which he said reflected upon the government.

On the 1st of August 1689, being the day in which our suspension by the act for taking the new oaths to the P. and P. of O. was to begin. I left Oxon and came to London, which was to be the place of my constant and fixt residence, till God should put an end to the miseries and confusions brought upon us by the late revolution, and restore our rightful king again.

At Magdalen tide 1692, the president and major part of the Fellows (for some I heard refused to give their consent) expelled me from the college by pronouncing my place void, as forfeited by the late act, and filled it at that election. But of this, see page , more at large.

The London clergy by concert with the bishop of London desired him in their name to thank the P. of O. for the hazards which he had ran in this expedition, and for his care in protecting our religion, but withall to desire him to have a tender regard for the king. But the bishop not delivering this in such terms and expressions as they expected, they took great offence at it, Dr. Sherlock saying that he and the rest of them would ever maintain the loyal principle of the Church of England, and that if the bishop of London forsook that, they would forsake him.

The soldiers association, as it was called, which several officers signed, a copy of which I received from captain S. whom I met with in sir William Howard's lodgings in Scotland Yard upon my coming to town. This was the first draught, which it seems they thought fit soon after, a little to alter and mollify.

"I do promise before God and upon the honour of a gentleman faithfully to serve the P. of O. and the Protestant religion against the king himself, should he land here, and to oppose all such designs with the hazard of my life and fortune."

January 21, 1688-9, in a conversation I had with Dr. Barlow, bishop of Lincoln, about the present state of affairs; he said, that when the king did not govern by law, he could not expect our obedience, that the obligation was mutual, that upon that supposition we were at liberty. I replied that this was an ill principle and against the declarations of our church, that a king is wholly unaccountable, that this was the pretence of 1641, and which cut off the head of Charles the first. He answered

that king Charles the 1st governed by law, and that saying the contrary of him was a slander. I said so too, but added, that the principle was the same both then and now, and that the rebels made use of it, and misapplied it accordingly. He further said that the declaration for liberty of conscience was against the laws of God and man, [and yet he and several of his clergy gave the king public thanks for it in a solemn address] and that the king had endeavoured to destroy our laws and religion. Suppose it so, my lord, said I, is he therefore deposable? Here he was afraid to speak out, and said falteringly, that he had deposed himself by deserting us; no, said I, he was driven and forced away. Besides, my lord, who shall absolve me from the oath of allegiance and supremacy I have taken to his majesty. He answered, that in this and the like cases they did not oblige, the pact being mutual. I replied, that this was a new, a strange and wicked doctrine, to which I would never agree and submit: though by the grace of God I would lose a thousand lives in defence of the established doctrine of the Church of England. At last he told me he would not be for deposing king James. But, my lord, said I, if you go about to make the Prince of Orange king, what is this to be called? So the discourse fell.

I soon after reflected, that by this new trick and devise of a conditional allegiance, these men designed to void the obligation of all oaths; and that they were now going about to justify the doctrine of deposing kings to be according to law, and consistent with their former oaths: and that what they were about to do, notwithstanding some pretended demureness and squeamishness, was tantamount to a direct and downright abjuration.

January 27th, 1688-9, Dr. Lamplugh the archbishop of York told me that Dr. Compton the bishop of London shewed him the original association paper, which he would have had him to subscribe. But he refused, asking London how he could do it? The bishop of London replied, among other things, that it was a just revenge. My lord of York said, that upon his first waiting upon the king after he came from Exeter, having kissed his majesty's hand, the king was pleased to take him into his closet, and then thanked him for coming up, saying that he was an old cavalier, farther adding that he would reward him. The bishop replied, that his duty was his reward. The king then told him, that he would make him archbishop of York: upon which he fell upon his knees, desiring his majesty not to do it. Sir, said he, I can serve your majesty better in the west, where I am known. The king bad him rise, and told him that it should be so. Upon his coming into his dressing room, the king ordered my lord Preston then president to draw up a warrant immediately for it.

That upon his doing homage the king said, Remember my lord what you have promised me: he answered, Ay sir, as long as I live, that upon the morning of the king's departure, the

king was pleased to tell him, that he was chased away from his own house by the P. of O. and desired him to pray for him. The archbishop prayed God to bless his majesty, saying, that he was an old man, and that if he saw his majesty's face no more, he hoped that they should meet together in Heaven. The archbishop told me further, that he had heard, that the P. of O. should say of him, that he had left his flock and committed the care of it to him: somebody replying (but he could not learn the name of the person) that he had got an archbishoprick by it. But says the archbishop to me, Dr. I did my duty in coming away without any design or expectation. Besides, if I had staid at Exeter, I might have been suspected to have been of the spiritual lords whom the P. of O. in his Declaration mentions to have invited him into England.

The bishop of Durham* and Ferguson laid their hands together on the book at Guildhall London, when they took the new oaths.

August 2d, 1689. Sir W. Howard told me that, dining in a mixt company with the earl of Macclesfield; he (the earl) began a health to him: here is a health to the Pope, who declares himself for the Protestants. My lord, said sir W. H. I drink it with all my heart.

Macc. Where is your archbishop of Canterbury?

H. At Lambeth.

M. It is no matter if he and the rest of the bishops were hanged.

H. What my lord, your friend Dr. Burnet, the bishop of Salisbury?

M. Ay, ay, let him go too with the rest.

Macclesfield told him, that he had opposed their house's when sitting, giving leave to Burnet to go into the country, because he was useful to them, and yet he swore, that sometimes he talks nonsense as well as the best.

March 3d, 1689-90. Sir George M'Kenzie told me that he was offered his advocate's place by the P. of O. which he refused: that when he was brought to the P. of O. among other things he said, Sir, they call me a bloody man and a murderer, but I have done my duty to my country, and to the monarchy, I must ask your highness whether you believe that king Charles the first was murdered, or whether Monmouth was guilty of rebellion? He confessed both. Then Sir, said he, I prosecuted such. These very men hate monarchy, they hate the royal family. You will find that except you let them have their will, they will renounce you too.

That in a discourse he had with Gilbert Burnet at Kensington, who expostulated with him about the death of his cousin, he (sir George) told him, that he was guilty of a foul

* July 30, 1689. The bishop of Duresme (of whom nobody had heard any thing for some months and it was generally said he was gone beyond sea) appeared at Guildhall and took the oaths there." *Diary of Henry earl of Clarendon.*

treason, that he had designed to have raised a rebellion, and to have seized upon the privy-counsellors, Berwick and Carlisle: and this proved by several witnesses. Burnet replied I am writing a history: And so will I, said sir George, and I think I have the advantage, as being an eye-witness, and admitted to all juntos, and private committees, by virtue of my office, and then that it is my trade and profession to know and understand these matters.

Sir George further acquainted me, that the proscription was still remaining upon Burnet in Scotland, adding these very words, that he was the greatest villain which ever God created.

August 14, 1689. Discoursing with my lord of Canterbury about Burnet's pastoral letter, not long before published, and upon my saying, that it would have served to have justified Cromwell's usurpation, he answered me, that he had formerly told Mr. Stanley, chaplain to the princess of Orange, who would come over sometimes to Lambeth, during the sitting of the convention, that 'there was no difference between them, but that the one's name was Oliver, and the other's William, and that we were to be beforehand with these men [who say we favour Popery by our non-compliance] and upbraid them with their popish principles and practices of deposing and dethroning kings.'

June 27, 1690. My lord of Canterbury at Lambeth (where I went at convenient intervals to pay my duty) advised me to take care of myself, 'for these men hate you.' I most humbly thanked his grace, and answered, that by the grace of God I am not only willing to go to prison, but to die for this excellent righteous cause, if it be the will of God.

A Copy of a Letter, word for word, put into my hand Monday evening, July 4, 1692, by Mr. Shaw, which was thus directed:

To William Shaw, esq. at his house in St. James's street, London.

Magdalen College Oxon, July 2, 1692.

"My Dear Brother;

"You have a neighbour on the other side of the street, Dr. Thomas Smith fellow of this college, to whom I must beg the favour of you to deliver a message in the name of myself and this society: viz. that we desire he will come down to Oxford and take the oaths, or send us a certificate of his having done it, sometime before the 22d of this month, otherwise we can no longer forbear to elect another person into his place. You may assure him, it is not without a great deal of reluctancy we proceed to this extremity: but we have received a fresh command from the queen by the judges of the assise, requiring us to tender the oaths again to all such, as have not taken them, and to execute the laws immediately upon such as refuse. I am, Dear Sir, your most affectionate friend and faithful Servant. Jo. Oxon.

"This is purely a civility to Dr. Smith, otherwise I would not have given you the trouble of it."

The next day I returned the letter to Mr. Shaw, and desired him to write in my name the following answer word for word, which I gave him in writing, that he might not make any kind of mistake, and so put the paper into his hand, viz, "Sir, I desire you to give my thanks to the President for his civilities which I shall always acknowledge, and withal to acquaint him, that I cannot come down to Oxford upon the accompt for which I am summoned, much less can I or shall I send a certificate, as I am required, preferring the peace of my mind, and the satisfaction of my conscience before the enjoying of my fellowship, which for the sake of my principles, I am ready to lose and be dispossessed of: and that with the same (not to say a greater) willingness and alacrity as when I was first chosen and admitted to it, that"

"I wish all happiness and prosperity to the college, and that I shall during the remainder of the time, which by the good providence of God I have to live, endeavour to serve it, as I may and as I ought to the utmost of my power.
T. S."

July 5, 1692.

THE COPY OF AN ORIGINAL LETTER SENT ME
BY DR. RICHARD RAWLINSON, RELATING TO
THE PROCEEDINGS OF MAGDALEN COLLEGE
IN OXON, 1687.

Sir,

The bishop of Chester, the Judges Wright and Jenner, impowered by a new commission to visit the Universities, came to Oxford on Wednesday, October 19th, with a Tipstaff before them, and the three troops of horse quartered here to guard them. You may suppose there was no great rejoicing at their coming in the University or city, and some shewed them disrespect as they passed, as the bishop of Chester afterwards signified, however for this or for some other reasons the troopers were ordered to go to their quarters, and provide powder and bullets, and to be ready without sound of trumpet, with their caboines loaden. On Thursday, October 20th, the commissioners read their commission in Magdalen College hall, that done the bishop of Chester made a delicate speech (the Papists call it a sermon) of passive obedience, taxing not only that society but the whole University with rebellion, and other enormous crimes against the higher powers: they sat fore and afternoon for three days wherein they declared Dr. Hough's election void, notwithstanding his most patient, composed, gallant, behaviour, his stout, and unanswerable defence: when he was asked whether he owned their commission, he answered yes, as far as he was obliged by the laws of the land and the statutes of the college, (or to that purpose) and no further; they called him an intruder: he answered he had as good

a right as any president, since the foundation of the college. He was qualified by the laws, chosen by the unanimous consent of the fellows, confirmed by the visitor's (the bishop of Winchester) approbation: he said and replied many things smartly, prudently, and courageously, in short he behaved like an honest and great man, and when they had struck his name out of the register and buttery book he came in and desired leave to speak, which being granted he made protestation against every thing they had done or should do in prejudice of his right, and appealed to the king and the courts of justice, whereupon there was a great hum made in the crowd which exasperated the commissioners, that they presently would have committed Dr. Hough to prison for that crime of popularity (though he and all the fellows were ready to make affidavit they were not privy to it) had not two gentlemen among the spectators given bond of 500*l.* a man, for his appearance at the King's-bench. Then the fellows were called over one by one, and asked whether they would admit the bishop of Oxford (Dr. Parker) for their president, they all replied, (except Charnock) that the statutes they had sworn to did incapacitate him, and that they had a president lawfully elected in prejudice of whose right they could not elect another, nor admit the bishop of Oxford, then the bishop of Chester (Cartwright) replied, that seeing they were so scrupulous and punctual in observing their statutes, why had they not Mass said in their college? answer was made that it was unlawful and had been abrogated by several acts of parliament. On Saturday the 22nd, a messenger was dispatched to court who returned with fresh instructions on Monday night; what they were, we may guess by their proceedings on Tuesday, for they sent for smiths to break open the president's lodgings, and upon their refusal to commit this burglary, their lordships' men and some vain and idle people about the town with iron bars and other instruments of violence broke open Dr. Hough's house, and Charnock entering drank the bishop of Oxford's health, but I should have said, that they had installed Wiggins his chaplain before, none of the fellows assisting at the ceremony, and the bishop's lady came to town to see how she liked her new dwelling. After this all the fellows were threatened with ejection if they did not submit, and were asked whether they would submit to the king's mandate; answer was made, that they would in every thing that was not contrary to the laws of the land and the statutes of the College.

Then they were ordered every one to subscribe the submission with their own hand, one or two subscribed without any salvo or restriction, amongst whom was Dr. Smith the traveler as I am informed, all the rest with the — salvo to the laws of the land, and the statutes of the college, and some added the right of Dr. Hough. This subscription was very foolishly done, for either it signified nothing, and then why should they do it to provoke his majesty,

as if they had a mind to prevaricate with him, and make the commissioners and the nation believe they yielded, or if they did signify any thing then they betrayed their own and other men's rights, and slurred their former brave and honest perseverance, and gave an inch to them they would soon take an ell. I should have excepted Dr. Fairfax who would have read a paper against all these proceedings, for which he was ordered to leave the college in 14 days, but let me tell you how this was construed. The wise men in the town and University concluded that Magdalen men had done a weak and foolish act, if not basely yielded: the generality from the quaker to the highest churchmen cried shame on them, and letters were sent to all parts I suppose to tell the news. The commissioners were all and low to the fellows, and tidings were sent to court how far the point was gained. But the submission did not signify to his majesty, wherefore the commissioners, signified on Thursday, October 28, that their submission was not full enough, that his majesty expected an address from them, wherein they should acknowledge their former contempt, wherein also they should do well to insert something concerning the civility and kindness of their lordships. Then Dr. Bayly stood up and said, I perceive your lordships as well as others have misunderstood our subscription, we never intended to submit to the bishop of Oxford, but to his majesty: nor did we ever mean to obey his majesty contrary to the laws of the land, and the statutes of the college, &c. One Mr. Fulham said that their lordships had illegally ejected their president, for which he was suspended, and then they adjourned to the 16th of November next. I should have told you that Dr. Hough in his examination represented to their lordships how his case was unparalleled by any example in the reign of his majesty or predecessors, that he should be condemned at London and a sentence of deprivation issued out against him, and fixed on the college gates, before he was either heard or cited: much endeavour was used to bring the Doctor to comply, he was closeted a great while, but to no purpose. Their lordships had no mind to be overheard, by townsmen or scholars of other colleges, and threatened to lay the townsmen by the heels, and the scholars also if the proctor did not keep them in order, using this expression, that if the civil power did not do, the military should. They removed their court from the hall at ——— to the common room and would examine every man by himself, yet they declared they would not speak, if they had not of their own society such as could witness what they said, as well as their lordships could set it down, nor would Dr. Hough speak till he had one allowed him to write down what he said of his side as well as their lordships had on theirs.

The University treated their lordships with two excellent sermons on Sunday, October 23, which touched them to the quick if their consciences were not seared: they lived nobly

while they staid, and drank his majesty ten pounds worth of claret; I leave you to judge what service such men do to his majesty, whom God long preserve, and deliver from the disaffection and hatred of his subjects which such unconscionable men labour to bring upon him.

I only give you a sum of proceedings as well as I could remember, I suppose you may have a more particular and exact relation from other hands. I pretend not to give any man's answer in his own words, but as nigh his sense as I could recollect from the relations of those that had been there present.

My duty to my good lord and all his noble family, my humble service to all the ladies and gentlemen, and my love to my sister. I am to preach Nov. 27, at St. Mary's, my own turn. I am afraid I shall not be able to come over before his lordship's departure out of the country: if I do not, I hope you will excuse your humble servant,

T. E.

Oct. 31, 1687, Christ-Church, Oxon.

Dr. Ven, master of Baliol college, is dead, and Mr. Mander, an honest man, is chosen in his stead; we were afraid of a mandate for a Papist, but the headship is so small, that they thought it perhaps not worth looking after.

[Having thus set forth Dr. Thomas Smith's Relation of these Transactions, and of his share in them, I will subjoin a different representation of several particulars, occurring in some Letters belonging to the archives of Corpus Christi college, Oxford, which I have been permitted to transcribe. These Letters are fifteen in number, of one (the third here inserted) the cover appears to have been torn off; it has neither signature, date, seal, or address, but appears to have been written on October 23rd or 24th, 1687. None are signed but those of July 31, September 25, and November 18. They all appear to have been written to Dr. Thomas Turner (brother of Francis bishop of Ely, See the Case of the Seven Bishops,) who was elected president of Corpus Christi college in February, 1688, N. S. The address of that of October 28, is cancelled, but appears to have been like the other thirteen: "To the reverend Dr. Thomas Turner at Ely-house in Holborn, London;" and most of them to have been written by William Sherwin, probably a fellow of Corpus, and a relative to the person of that name who was demy of Magdalen.]

N^o. I.

Sir; Though it is very likely that you will have a better account from London of Magdalen college proceedings before the commissioners on Friday last, than what I shall give you, yet I would not omit letting you know what came to the college by a person they employed on purpose. My lord chancellor heard all their evidence against Farmer very calmly, and when some of the managers of his side would have produced something by way of re-

criminating, he told them he would hear nothing, unless they could by any substantial proof invalidate any thing that had been said; upon which one Brockwell, formerly of Magdalen hall, and as very a rascal as any in the bunch, swore directly against what a gentleman had before sworn, but my lord chancellor gave him a sharp reproof, and it is thought will have something more to say to him. What was made out against Farmer was so scandalous, that Obadiah and his other friends being in the court could not say one word, the evidence of the college being most of them people of good report. The conclusion was that my lord chancellor told Farmer, that that court looked on him as a very bad man, and the college do believe they are fully discharged of him. On Friday next they are to answer why they did not all appear according to the citation; Dr. Bernard has brought another letter to the college and they have admitted him; our bishop lives at Cudsdon, but the clergy do not very much resort to his house; Mr. Davies gives you his service; all your friends at the college are well; Dr. Fairfax continues still at London.—Sir, I am your obedient servant,
July 31.

WILL. SHERWIN.

N^o. II.

Sir;

Sept. 25.

In my last I gave you an account of Magdalen college, and that they had appeared before his majesty, who gave them (it is thought) the sharpest reprimand that ever he gave to any of his subjects, with a command forthwith to elect the bishop of Oxford, but they rather chose to fall under his majesty's displeasure than put themselves in the least danger by breaking their oaths. Their answer was given in to his majesty, and they have some reason to think that likewise both their petitions; there has been no farther trouble given them yet; neither do they know which way it is designed to proceed against them; it is the opinion of most that my lord of Oxford's pretensions will not long continue, he being under such circumstances that he is not like to live but a very short time; he has never been well since he came into this country; that day his majesty left Oxford there was a letter brought to Mr. Vice Chancellor (but the king's name was not to it) for the making Mr. Weikins and Mr. Collins, both chaplains to the bishop of Oxford, doctors, and his secretary Mr. Brook, B. L. and Mr. Sparks and Balew, doctors, but the convocation denied them all; Mr. Weikins has been at Windsor, it is thought for a mandate, but there is nothing appears but a letter from my lord Sunderland; I am afraid when it is proposed they will find the convocation of the same humour as before; Mr. Collins has lost all his friends in the university, and it is thought would willingly have a fair opportunity to declare, but they think he will see how it goes with my lord concerning that college.—Sir, I am, your most obedient servant,

W. SHERWIN.

N^o. III.

Sir; I shall give you as good an account of the affairs of Magdalen college, as my memory will give me leave. On Wednesday last Mr. Aderbery fixed the citation at the gates, wherein Mr. John Hough, the pretended president, with the fellows and scholars of the college, were warned to appear in their chapel between nine and ten on Friday the 21st. The commissioners (the bishop of Chester, my lord chief justice, and Mr. Justice Jenner,) came in on Thursday in the afternoon, attended with their own officers, and with the troops of this place, their swords being all drawn; on Friday morning they came to the chapel, and from thence adjourned to the hall, where after the commission was read, my lord of Chester made a speech, in which he was pleased to tell that society, that they were a company of obstinate, stubborn, contumacious, petulant, and I know not what, I think, rebels, and then the fellows names were called, and adjourned till two in the afternoon: when they came at that time and were sat, they called the rest of the names of that society; then the president desired a copy of the commission, but it was evaded by telling him he might hear it read a second time, but Mr. President said there was some words which seemed to give them power to alter the statutes, to which Mr. President said he could not submit; upon which the bishop said, If you cannot submit to an alteration, you being sworn to the statutes, why do you not read mass? Mr. P. My lord, if there be any part of the statutes against the law, they do not oblige; I hope your lordship knows reading of mass to be against the law: His lordship was pleased to say he did; then Mr. President desired he might put in a protestation in behalf of himself and the college, which was, that they owned the power of the visitors as far as their commission agreed with the laws of the land and the statutes of that college: my lord chief justice said they would act no otherwise; then there was a petition read on the behalf of Dr. Rogers, an old organist, necessity pleaded to it; Mr. President asked if they would take an answer from the college to that matter, but they took little notice of that, and then adjourned till Saturday morning, eight o'clock, in the common room, where the president was called in alone, and after an hour's discourse my lord of Chester ordered some of the fellows to be called in, when his lordship three times declared the president's place void, and forbid any respect to be shewed him as president, and that he should deliver his keys; to which Mr. President made answer, that he had been an hour in private, and therefore desired what had been then said might be published, and withal said that he should not deliver his keys, which would be giving up his freehold, which he was resolved not to do; Dr. Fairfax had not appeared till this morning, when he was asked in private whether he would consent to admit the bishop

of Oxford president, he made them no other answer but that they had suspended him, and made him incapable. Then the doctor desired in the name of the society, that what had been said to the president in private might be published, which was readily granted; and the president when he had heard it allowed of it; then the doctor said he would put in his plea in Westminster-hall, concerning his suspension. Then the president and the doctor were dismissed, and the fellows called in and his majesty's mandate read for the electing the bishop of Oxford, and the fellows called according to their seniority, to give in their answer whether they would admit him or not. It would be too tedious to give particulars, but in general they all said, that they could not without great violence on their consciences do it, except Dr. Thomas Smith, who shewed his compliance, as did likewise Mr. Charnock: then the commissioners adjourned till two in the afternoon; when the society was met there was a letter read which all the fellows that was then in town had subscribed; it was to this effect, that when they were sent to concerning the admission of the bishop of Oxford, they said the place was already full, they all answered, that they did do it and were of the same opinion still, when that was done Mr. President desired to be heard a word, which was granted; My lords, you have this morning declared my place void, my lords, I do disown your proceedings which are past, and now and whatever shall be hereafter concerning me or the college, and do appeal to his majesty and his courts of justice: upon which the rabble made a hum; and the lords commissioners charged Mr. President with it (though he offered to make oath that he knew not one man that did commit that great rudeness) and have bound him to answer it in Westminster-hall, and then adjourned till Tuesday morning.—Sir, the former relation is as near as I could gather it, but far from being exact.

N^o IV.

Sir;

Oct. 25, 1687.

Since my last, I find men keep up their courage and resolution, knowing their cause just, and therefore rely upon one above the reach of civil or military force wherewith it is said the L. C. J. threatened to maintain his commission; on which account an express was sent on Saturday at night to London; they told Dr. Hough it was a breach of the peace to lye in the President's lodgings, which he has not done since Saturday. Dr. H. Smith of Ch. Ch. and one Mr. Entwistle of Br. C. preached before the Commissioners on Sunday, in both which sermons my Ld. B. of C. conceives that he was reflected upon, as serving another cause than he pretends to own: in so much, that he thinks himself obliged to declare to all that come near him since, that he will live and die in the communion of the Church of England. It is said that the ground of this commission is

raised from what you find in Wood's History of Oxford, l. 1, p. 291, A. D. 1568, but the case much different: Cole, for whom the queen's mandate was sent, statutably eligible: Horn, bishop of Winchester, the local visitor, first of the commissioners, &c. Upon Dr. Hough's desire to know for what he was bound to his good behaviour, it was replied, that he gave the occasion of that disturbance by what he had said: the main question to the fellows was, whether they would assist at the admittance of the bishop of Oxon President of Mag. Col. Dr. T. Smith only complied, though they took other answers for concessions, which truly were not so. Dr. T. Smith told the bishop of Oxon's son on Sunday, Now we have routed the president, and shall see your father here shortly: there is a design to manage the discontented for want of preferment, to make their complaints against the bishops for preferring their kindred, &c. This I tell you to let you know I am none of the number.

Your's.

N^o V.

Sir;

October 27.

In my last, I gave you an account that Mr. President's name was dashed out of the book on Saturday night, and upon his protesting against their proceedings there was hum in the room, for which they charge Mr. President of being guilty of a riot, and have bound him in 2,000*l.* bond to appear in Westminster-hall the 12th of the next month. On Tuesday morning the Commissioners came to the college, where the worthy Mr. Wickins, chaplain to our good bishop, was ready to wait on them; they immediately went into the chapel where Wickins was installed as proxy for the bishop; there was not one of the foundation assisting, except Collins and one Haselwood, a chaplain who will as soon as he can get any thing, prove himself a knave; when they had done this, the Commissioners went to the lodging doors, where, with some trouble, they procured a smith to break them open, and put Mr. Wickins in possession; the good lady came within an hour, she longed to be there; the bishop is not yet come. In the afternoon the fellows were called, and the Commissioners put this question to them, Whether they would submit to the bishop, the king having by his supreme power, made him President of that place; Dr. Fairfax was first called, who having not submitted to the court, was pronounced no fellow, and has 14 days time to remove; upon which, he put this protestation against their sentence: That it was *lex nulla*, and so far forth as it should appear to be *aliqua*, that it was *iniqua et injusta*, therefore from it he did appeal to the king and his courts of justice. The judges were pleased to tell him that it might probably come before them, and he should be sure of justice. The greater part of the fellows designed on Monday to give an answer to the same purpose; but I am told upon the advice of

friends, Dr. Jeane and other good men, they all agreed in the following answer: Whereas it has pleased his majesty to put the bishop of Oxford into our college as President, we whose names are here underwritten do promise we will obey him as far as it stands with the law of the land and the statutes of the college, it being no way prejudicial to the right of Dr. Hough. The Commissioners would fain have the clause concerning Dr. Hough left out, and promise that it shall be to the same effect. It would be a kindness if this was sent as the last.

Sir, I am, your obedient Servant.

The Commissioners conclude this morning. My Lord of Ch. has made great complaint that he has no respect.

N^o VI.

Sir :

October 28.

This morning the Commissioners met again at Mag. Coll. and required that the society should give it under their hands that whatever they had hitherto done was obstinacy in them and that they were sorry for their so doing, and to own themselves to be wholly in an error in opposing the king's mandate, upon which the fellows went together, and by Dr. Bayly gave this answer; that they had committed no crime and therefore could not beg pardon, and withal said, to prevent any farther misunderstanding, that they would explain the meaning of their first answer, that when they said they would submit, they did not mean that they would obey the bishop as president in *licitis et honestis*, but all that they meant by it was that they would not oppose the royal authority which put him into the college. They were all asked if this were their answer, which they owned. Mr. Fulham was suspended for saying that the bishop was not lawfully put in, and if they had been resolved to do it as they had done by force, it should have been by a *Posse Comitatus*; my lord chief justice answered that the bishop had more right to be president and [than] they had to be fellows, and would continue so much longer, and that the posse would be amongst them before it should be long. They have adjourned to the 16th of the next month,

Sir, I am, your obedient servant.

If you please to send this as the former.

N^o VII.

Sir :

October 31.

I was in such haste when I wrote my last that I have almost forgot what was in it, therefore I shall give you the trouble of this with the particulars of Friday's action. So soon as the commissioners were sat; My lord of Chester told them, Gentlemen, his majesty is not pleased with your answer, and does expect from you an address in which you

VOL. XII.

shall own all your proceedings to be in disobedience to the king, and in the same address (though we do not require that of you) if you acknowledge the great civilities* you have received from us your visitors, it will be well taken, upon which there was this general answer made; that they were not conscious of any fault they had committed and whatever trouble had of late befallen the college, was from a due observation of their statutes and to preserve their oaths; from which they would never recede; Mr. Fulham who had not before appeared, protested against their proceedings, and they have suspended him during the king's pleasure, then the fellows were ordered to go forth and consider of an answer; which they returned in these words; My lords, we have endeavoured in all our actions to express our duty with all humility to his majesty, and being conscious to ourselves in the whole conduct of this business before your lordships, that we have done nothing but what our oaths and statutes indispensably oblige us to, so we cannot make any declaration whereby we acknowledge we have done any thing amiss; as having acted according to the principles of loyalty and obedience to his sacred majesty, as far as we could without doing violence to our consciences and prejudice to our rights, one of which we humbly conceive that of electing a president to be, from which we are sworn upon no account whatsoever to depart; we therefore humbly beg your lordship to present this favourably with our utmost duty to his majesty, whom God grant long and happily to reign over us. As to the advice mentioned in my last, I cannot be positive; neither would I willingly make too near an inquiry: but this I am sure, that there was very few in that society but had made full resolutions at first to do what they will appear to do in the last; and whatever misconstructions are made of their first answer at present, will be made fully satisfactory in the end.

Sir, I am your obedient servant.

I must beg you to continue your trouble in sending this.

N^o VIII.

Sir ;

November 6th.

I am very unwilling to give either of those worthy persons names who are reported to advise with the college in that answer which seemed a compliance; but whoever shall talk with any of the fellows of Magdalen college, they are so far from thinking themselves in any fault, that they very highly justify that action. And they do not wonder that the world should be so mistaken as to make a false construction of it, since the lords commissioners did themselves do so, and make report

* So in Mrs. Cellier's Case, vol. 7, p. 1183, baron Weston, after grossly abusing her, tells her, I have not been noted to be a person that use any great severity towards any body.

of it above as if they had now secured the business they came about ; I mean in bringing the college to a submission and acknowledgement of their fault: when I have told you that the same time that the seeming compliance was delivered to the commissioners, this petition was likewise delivered; and if they had compared both together and considered of it, they would have suspended their sending an account of the college's compliance. I have the good fortune to be frequently with those good men at Magdalen college, and I am fully persuaded that as they will always appear loyal, so all persons will find them persons of great honesty and good conscience.

Sir, I am your obedient servant.

Dr. Fairfax is come to my house ; he gives you his service.

I beg you would give yourself the trouble as formerly.

* To the Right Reverend and Right Honorable his Majesty's Commissioners for the visiting of St. Mary Magdalen College in Oxford.

May it please your lordships ;

On Friday last in the afternoon, you seemed to insist very much on this particular, That his majesty in commanding the fellows of the said college to elect Mr. Farmer president, did thereby inhibit them to elect any other person whatsoever, (which has not yet been made appear to be law, either out of the books of civil, canon or common law ; neither is it agreeable to reason, that a command to elect a person incapable, should include an obligation not to elect a person capable ; that being a kind of contradiction 'in terminis,' yet this being granted, it cannot in the least affect the fellows or invalidate their election of Dr. Hough, notwithstanding his majesty's mandate in behalf of Mr. Farmer, who being incapable of the place, the fellows cannot be said to be guilty of any disobedience or disloyalty in proceeding to the election of another person who was qualified according to the statutes, being forced to make an election : for they are obliged by the statutes of the college, when called together to elect a president or any other officer, under pain of perpetuall expulsion from the college to meet and make an election ; which punishment they incur 'ipso facto,' who either refuse to meet when so called, or being met, not to nominate or elect a person into the office then void : as appears by the statutes of the college, 'de numero scholarium et electione presidentis.' Now according to the founder's directions in the statute ; on the fifteenth of April last past, the fellows were called together by the vice-president to elect a president in the place of Dr. Clark deceased ; and the oath required to be taken before the election, was administered

* Written on the same sheet with the preceding letter.

to them by the vice-president, whereby they are obliged to nominate and elect one that is, or has been, fellow of Magdalen college, or New college, in Oxford : which oath when the Fellows had taken, it was not in their power to elect Mr. Farmer, and yet they were then obliged to make an election, under pain of perpetuall amotion from the college, as appears by the said statutes ; and it cannot be imagined that his most sacred majesty did expect that the fellows should be either perjured, or forfeit their right to their fellowships, rather than disobey his commands ; his majesty having most graciously declared that conscience ought not to be forced ; and that none of his subjects should be molested in the enjoyment of their rights and privileges. Now that our proceedings at the election cannot lay any imputation of disobedience or disloyalty upon us, will thus be made appear ; either we had power to elect a president, or we had not: if we had not, to what end or purpose did his majesty command us to elect one ; if we had, our power was either restrained to persons so and so qualified, or we were at liberty to choose whom we pleased ; but we could not do the latter, as appears by our statutes, and therefore we could not elect Mr. Farmer, being not invested with any power to elect a person unqualified ; and if we had so done, our election would have been null and void in itself, and the person elected liable to be turned out by our visitor.

As for the decree of his majesty's commissioners (in pursuance of which your lordships have admonished Mr. Hough to recede from the place of president, and quietly to resign the keys of his office, and have struck his name out of the college books), we humbly conceive it to be null and void in itself, to all intents and purposes ; Dr. Hough being thereby deprived of a freehold for life, of which he was duly and legally possessed, without ever being called to defend his right, or any misdemeanour objected against him. Wherefore we humbly beg leave of your lordships, that Dr. Hough may be permitted to defend his right and title to the presidentship at common law, before any other person be put in possession of his place :

THO. STAFFORD.

HEN. FAIRFAX.

Nº. IX.

Sir ;

November 17.

On Tuesday the commissioners came to Oxford (the same as before without any alteration) they were attended by the troops as formerly, they alighted at Magdalen College, where they were received by the bishop, the dean, Obadiah, old Joyner and other of the gang. On Wednesday morning Aderbury fixed a paper on the College gates, in which Dr. Fairfax his expulsion was declared by the high commissioners : at nine in the morning they went into the common room where my lord of Chester made a speech, in which his lordship gave

them much the same language as he did in the last; and was pleased to droll upon their consciences; but in the conclusion told them that they had now brought an instrument, which they were all desired to subscribe (except Mr. Charnock and Dr. Rougery*, whose behaviour they were already well satisfied with,) but all the rest immediately upon sight of the paper did refuse being 25, and upon that the commissioners struck their names out of the book, and fixed their expulsion (as they are pleased to call it) on the college gates; they have admitted Joyner and Alibone fellows, and Jenniver, A. M. and Higgins an undergraduate, two of the demies fellows likewise; some of the undergraduate demies, that last time the commissioners were here had shewed their willingness to conform, were called in and offered fellowships, but their consciences being awakened they refused; there was two young lads made demies, how and when the rest of the places will be filled we know not. The senior demies in the name of the rest denied the subscription, but was bid begone and no notice taken of it, by which means they are left to a farther execution, being resolved not to own these people that are like to be set over them; Haselwood a chaplain, who had formerly herded with Charnock and that gang; made about a week since a solemn recantation voluntarily to the whole society; wherein he acknowledges he had done very ill things, of which he heartily repented; and being by the commissioners offered a fellowship refused it, and said he could not own any president in Magdalen College but Dr. Hough, this the substance of what was done; the commissioners went out of town by one of the clock on Wednesday in the afternoon. The paper will give you an account who are the sufferers.

Pray shew it and this to the gentleman.

Dr. T.

Nº. X.

Sir; this is the account I received from Oxford, concerning the business of Magdalen College. The commissioners dined on Thursday with the bishop of Oxford in the President's lodgings and lay there that night, the next day the court sat, and the bishop of Chester read a long speech to the fellows aggravating their fault, and charging them with obstinacy and rebellion, then they were required to subscribe a paper, much of the same import with the former, 25 of them refused to subscribe and were immediately turned out. Dr. T. Smith, Mr. Charnock and Mr. Thomson, having submitted before, it was not tendered to them. Here were 8 absent, Dr. Younger, Mr. Smith, Mr. Maynard, Mr. Hollis, Mr. Hicks, Mr. Holt, Mr. Goodwin, and one more, 3 places vacant, and Mr. Hooper's the madman, which makes up the number of forty; the subscription was not tendered to the demyes, they

* Qu. Dr. Roguery an abusive designation of Dr. Thomas Smith.

admitted Mr. Joyner and Mr. Allibone, and two demies, Jinnevor and Higgins, fellows; fellowships were proffered to more and to persons of other houses, but were not accepted.

I am, Sir, your most humble servant,
November 13. WILLIAM THORNTON.

Nº. XI.

Sir;

November 20.

In my last I gave you the fatall account of Magdalen College. I am apt to think it will not be unacceptable to you, to hear the state of that place, since the dissolution. By the way give me first leave to tell you that Dr. —* Smith on Friday morning asked leave of the bishop to go out of town, which he denied him, telling him that there was no one that understood the college business, and therefore he must not go; on which the Doctor told his lordship that he had leave given by the society before he came to the college, which leave he took to be legal, and therefore would go. Dr. Pudsey, it is feared, will make good an old saying that a truly covetous man cannot be honest; but you shall hear more of this; the demies I told you offered to deny the subscription, but were bid begone and no notice taken of them; since that they have denied any power over them in that College and do refuse to capp, they constantly keep prayers, one of the Mr. Demies reads; they likewise keep disputations and other exercises, a master looking over the B. A. and A. B. the undergraduates; there was a cloth laid in the hall for the undergraduate fellow above the graduate demies; which they ordered the butler to take away, but he being timorous, they did it themselves; telling the undergraduate fellow, that the statutes of that place did not admit that any foundation undergraduate should take place of a graduate, and while they stayed in the college he should not have it, upon which he went out of the hall; Charnock sent to the undergraduates to come and *narrare*, to which they sent this answer; that they were deprived of their deans and lawful officers, and did resolve not to obey any other. Charnock tells them that to morrow he shall take upon him the office of dean, and they are resolved not to obey him nor the bishop, so that there is great hopes by the latter end of this week, that they will be in the same circumstances with their governors, the thing they heartily wish for. Two young men of Merton College (they say kinsmen of the bishop of Chester) were sworn demies, but I am told by a worthy man of Merton College that the young men are ashamed of it and will never go to that unhappy college. The Vice Chancellor being the day of

* Here occurs a word which I cannot with certainty decypher, it is not either John or Thomas, the only christian names of the Doctors Smith, which appear in the lists of fellows, I conjecture it to be a nickname applied to one of them.

execution invited by the bishop to dine with the company, returned this answer, that he did not like with colonel Kirk to dine under the gallows.* You need not speak this publicly; if my friend comes to wait on you be pleased to let him see this.

N^o. XII.

Sir;

November 22.

I received your last kind letter, the contents of which I imparted to some of those worthy men of Magdalen College (but not your name) they return you their most hearty thanks, not only for your kind offer in assisting them, but your good advice, which I doubt not but will be followed; they are all getting out of town as fast as they can, they being so much importuned by friends to entertainments, that they can no other way prevent but by leaving this place. I am very well assured that a great many of them (being so suddenly thrown out) will be put to hard shifts, but at present those (that they are most ready to recommend to the assistance of friends) are Mr. Harwar and Mr. Peniston, they are both very honest gentlemen, who have never had (scarce) any thing from their friends, has made their circumstances such that I believe they are more in debt than they can well pay; and their creditors here are not so kind as has been expected; Mr. Goodwin by sickness in London was prevented from coming down to suffer with his friends, he sent two letters in which he declared his resolution to disown the jurisdiction, the one of which was given to the commissioners, and although he is not by them expelled, yet he resolves not to come to the college any more. He is a sober honest man, and I doubt not but Mr. Davies will acquaint you that he is a person highly deserving, and I am sure that his circumstances are but low in the world, he is at this time at captain Beale's in the Old Palace Yard; the demies continue still as I acquainted you, and do use all endeavours that they may be relieved from that place. I have had offers of a fellowship for my son more than once, but I thought my first answer would have prevented a second, which was that my son was capable of no favour in Merton College, but from Dr. Hough the president and those worthy gentlemen that are turned out, and when it shall please God to restore them to their rights he would be sure to have what he deserved, I thank God he is honest and has in himself courage enough to withstand any of their temptations, and has from the beginning behaved himself to the satisfaction of all that worthy society.

Sir, I am your most obedient servant.

N^o. XIII.

Sir;

December 29.

It is so long since I wrote to you, that it

* Probably this is an allusion to the fate of the mayor of Bodmyn.

makes me choose to give you the trouble of this rather than be thought guilty of a neglect. We every day expect the commissioners at Magdalen College, and then you will soon hear that all persons now in the college will be dismissed; the chaplains and clerks, who are under no oaths, are quitting the college as fast as they can, by reason they would not be thought disobedient to the king's command. In my last I gave you an account that the most of the demies had resolved never to own that power which was put over them, it being so positively against their oaths, to which they still continue; they do not cap any of them, nor Charnock that was there before; about a fortnight since Charnock singled out Will., not only for a prejudice that he had taken against him for being by when they broke open some of the fellows doors, and telling the persons to be careful of what they did; but I believe something for mine and the —* sake who was his patron, he demanded of him why he did not give him respect; to which he answered, he gave him what the statutes required, and he thought more than his due, he being the only man that refused to give any respect to the president; Charnock immediately commanded the cook to let him have no more commons, and then crossed his name in the buttery; which Will. took off again, and told him he had no more power to put him out of commons or cross his name than one of the turnspits, and immediately went to Mr. Hawles and told him that in the absence of the president and officers, he came to him as the proper person to make his complaint, that Mr. Charnock being no officer, had contrary to the statutes, deprived him of his commons, and therefore required him to command the cook to give it him; and for his not capping he would desire the statute might be produced, and he would submit to any punishment therein appointed, Mr. Hawles promised he would do it; but soon after told him Charnock was dean, and that he must submit to him, or else he would be called before the bishop the next day, to which he made this answer, that if the bishop were at Cudesden he would readily wait on him; but not in the president's lodgings, and that he did disown all power in the bishop as president, and to Charnock as dean; which put me in great hopes they would have struck his name out of the book: but Charnock has told him that he shall in a short time be looking through an iron grate. On Christmas day Jenifer sat senior of the hall, the masters and batchellor demies rose without leave, upon which Charnock commanded the cook to give them no more commons, and crossed all their names, they all struck off their crosses, and went immediately to Mr. Hawles and required their commons, but he like a base coward, refused to do it, upon which they told him the next day they ex-

* Here an abbreviation which I cannot with certainty decypher.

pected a positive answer from him whether he would or not, and then they would proceed another way. He told them something of the bishop, but they disowned all power but his in the college, yesterday the cook was privately ordered to give them all their commons again. It is expected when the commissioners come they will all be expelled the university, which which is no terror to them, choosing rather to beg their bread with a safe conscience than to yield themselves to perjury. Sir, I am your obedient servant.

Mr. Craddock, Mr. Davies, Mr. Penystone, and Mr. Harwar have had institution to small livings. Dr. Pudsey is gone from the college.

N^o. XIV.

Sir ;

January 8.

I have a great while designed to send you an account of the whole proceedings against Magdalen College, but I write a bad hand and there is a great deal of it, which has been the reason I have not yet done it, but do intend to give you the trouble, in the mean time I thought fit to acquaint you that these following persons have brought their mandates for fellowships, and I am told his lordship has been pleased to inform them, that it would be very necessary for them to have mandates for their degrees, the university being a stubborn people that would do nothing but by force, Richard Crompton, Thomas Fairfax, Edw. Merideth, John Dreyden,* Phil. Lewis, Alex. Cotton, Tho. Guilford, William Plowden, John Christmas, Lawrence Wood, John Ross, Aug. Belson ; Hills and Cuffand, Demies, all Papists, yesterday they brought their mandates for offices which are, Chernock vice president, to Smith, Hawles, and Joiner, Bursars, Lewis, de [qu. dean] of divinity, Fairfax and Alibone deans of art. Sir, I am your obedient servant.

N^o. XV.

Sir ;

January 17.

I received your last, and return you my most humble thanks for your kindness in it ; Mr. D—— being with you before this makes me think it needless to give you any account of that matter you mentioned. I hope you received the papers, which I had sent you long since could I had time to put them together. On Sunday last the virtuous Mr. Charnock vice president of Magdalen College, crossed most of the demies, and sent them word the bishop commanded them to appear before him at two o'clock on Monday, they returned this answer, that no one now in that college had any power over them, neither would they obey any commands from them, upon which the book was sent for to the bishop, and these following persons names struck out : Mr. Holt, Mr. Addams, Mr. Vesey, Mr. Braborne, Dr. Hyde, Dr. Woodward, Dr. Fulham, Dr.

* Qu. the second son of the poet.

Watkins, Dr. Stacy, Dr. Sherwin, Dr. Keynton, Bush, Cross, Wells, the rest will all follow ; Will. upon the advice of good friends is entered in Edmond-hall.

Sir, I am your obedient servant.

In one of the letters is inclosed a list of the thirty seven actual fellows of the college, some of whose names are distinguished by the mark of *Ab*. The names of Dr. Thomas Smith, Mr. Thomson and Mr. Charnock are distinguished by a cross. And the following note is made to the list, " Those gentlemen which you find *Ab* I believe will all be turned out, and for those that are crossed I think of Dr. Pelham's opinion, that no man of sense would ever quit a fellowship unless he was required to deny the Holy Trinity."

In order to prove that king James did not upon the disaster which befel the prince of Orange's fleet, upon its first sailing, design to retract his concessions respecting Magdalen College, M^r Pherson has inserted in his " Original Papers" some passages from the MS. of Dr. Smith, and he subjoins to them the following Articles:

" A letter from the bishop of Winchester, visitor of Magdalene College, throws further light on a subject, for which James has been, without reason, much blamed. But though that prince was guilty of an act of folly, in depriving the fellows, he appears to have known nothing in the delay of their being restored."

" *The Bishop of Winchester to the Archbishop of Canterbury.*

" May it please your Grace,

" I intend to-morrow to set forward for Oxon, and ordered several of the fellows of Magdalene to meet me there, on Tuesday and Wednesday at the farthest ; though I have not seen or heard of the president. But, about two of the clock, I received the inclosed order, which stops my journey for the present ; and I shall accordingly issue forth my citation. All people's mouths are now full of praises for our order, to whom, they say, they shall ever owe the preservation of our religion. I beg the favour of your grace's commands, which shall always be obeyed, by

Your Grace's obedient Son and Servant,
Farnham Castle, P. WINCHESTER."
Oct. 14, 1688.

" The truth of the following anecdote is established by collateral evidence. The delay in restoring the fellows, however, has been variably [qu. invariably] brought as an irrefragable proof of James's design of retracting his concessions, upon hearing that the prince of Orange had been brought back by a storm. This storm certainly happened not till a day or two after Sunderland wrote the official letter, which brought the bishop of Winchester so precipitately to London. Though the folly of

James merits no favour, his misfortunes ought to command justice.

An Anecdote concerning the same subject, from Mr. G. Clark, at Oxford.

"He (Mr. G. Clark) shewed me too Mr. Finch warden of All Souls' letter to him of the twenty-first of October 1688, giving an account of a messenger coming to bishop Mew, at nine the night before, after the bishop was in bed, with an order from Sunderland to the bishop to be at the council on the twenty-second, at ten in the morning,* upon which, the bishop set out on the twenty-first, without restoring the fellows of Magdalen College, though he was come down on purpose for it. No cause was mentioned in the order; but it was a general one to all the council, to be present at the enrolling the depositions of the birth of the prince of Wales. The messenger had gone to Farnham and thence followed the bishop to Oxford. The king, when he saw the bishop at London, asked him if he had restored the fellows; and finding he had not, was very angry and sent him down to do it, on the twenty-fifth. The prince of Orange's fleet was drove back by a storm, on the 21st of October, O. S. He came that evening into Helvoetsluys, with eighty transports; and sent orders next day to admiral Herbert, to send the transports with the cavalry to him, and told him his resolution to sail the first fair wind. I read several of the prince's letters and lord admiral Herbert's letters proving this fact. So king James could have no notice of it to recall, as is pretended, the order he had given bishop Mew to restore the fellows.

T. CARTE."

Original Papers, vol. 1, p. 272.

The following shrewd observations of Adam Smith (Wealth of Nations, book 5, c. 1,) are so applicable to the course of violence pursued by James, that I hope the insertion of them here will not be thought impertinent:

"Fear is in almost all cases a wretched instrument of government, and ought in particular never to be employed against any order of men who have the smallest pretensions to independency. To attempt to terrify them serves only to irritate their bad humour and to confirm them in an opposition which more gentle usage

* The following is probably a copy of the circular letters which Sunderland wrote to the Bishops at this time:

"The Earl of Sunderland to the Archbishop of Canterbury.

"Whitehall, Oct. 20th, 1688.

"My Lord; The king commands me to acquaint your Grace, that he desires you, and such others of my lords the bishops as are in town, should attend him upon Monday next, at ten in the evening. I am, &c.

"SUNDERLAND, P."

perhaps might easily induce them either to soften or to lay aside altogether. The violence which the French government usually employed in order to oblige all their parliaments or sovereign courts of justice to enregister any unpopular edict very seldom succeeded. The means commonly employed, however, the imprisonment of all the refractory members, one would think were forcible enough. The princes of the House of Stuart sometimes employed the like means in order to influence some of the members of the parliament of England, and they generally found them equally intractable. The parliament of England is now managed in another manner, and a very small experiment which the duke of Choiseul made about twelve years ago upon the parliament of Paris demonstrated sufficiently that all the parliaments of France might have been managed still more easily in the same manner. That experiment was not pursued. For though management and persuasion are always the easiest and safest instruments of government, as force and violence are the worst and the most dangerous, yet such it seems is the natural insolence of man that he almost always disdains to use the good instrument except when he cannot or dare not use the bad one."

Hume admits that "as intelligence arrived of a great disaster which had befallen the Dutch fleet it is commonly believed that the king recalled for some time the concessions which he had made to Magdalen College." And in archbishop Sancroft's Journal of what passed between the king and the bishops concerning an 'abhorrence' of the designs of the prince of Orange, (Collectanea Curiosa, No. LXXI) the following passage seems to render it indisputable that at least James had so expressed himself as to cause the visitor to apprehend that his majesty's intention was, that the restitution of Magdalen should be suspended. "He [Sancroft] was introduced to the king, who discoursed to him about many things, as about the restoring of Magdalen College in Oxford; the bishop of Winton mistook his letter, for he never meant to delay the visitation."

In the 'Collectanea Curiosa' are published the docket of king James's license, dispensation and pardon for Obadiah Walker master of university, and three Fellows of colleges in Oxford, May 1686; abstract of the king's license to Walker and his assigns for 21 years to print and sell certain Popish books therein mentioned; the same king's licenses, dispensations, and pardons for Edward Sclater of Putney clerk, May 1686, and John Massey dean of Christ church, December 1686, (as to which last see the Preface to the State Letters, &c. of Henry earl of Clarendon,) and his mandates to All Souls' College Oxford, to present to one of their livings, a Fellow of Trinity College, Cambridge; and to archbishop Sancroft, to grant dispensation for Hanbury (one of the king's chaplains) to hold two livings though without distance.

The following passage respecting Obadiah Walker is extracted from Mr. Hargrave's transcript of Dr. Thomas Smith's MS.

I met Mr. Obadiah Walker about the beginning of October 1687, and had the following accidental discourse with him standing at a door whilst the Foot Guards were marching by.

O. W. What? You think to baffle the king at your college?

T. S. What do you mean? I do not understand your raillery.

O. W. I do not know what you think; but they of the college think and believe so.

Then we discoursed of the king of France his edict; you see, said I to him, what methods they use in France to propagate what they call the Catholic faith, what a horrid thing is it to use such cruelty towards all, who will not fall down and worship a bit of bread.

O. W. Obstinate men are to be forced, the magistrate is not to bear the sword in vain.

T. S. This is to be understood of the punishment of evil doers, you horribly pervert and misapply St. Paul's words.

O. W. They refuse to believe a doctrine of the Catholic church of God.

T. S. Master, I deny that; and you either know, or ought to know the contrary; I will dispute it with you when you will. He replied, When you will, and so left me in a heat.

AN ACCOUNT OF THE LATE VISITATION
AT ST. MARY MAGDALEN COLLEGE, IN
OXON, BY THE RIGHT REVEREND FATHER
IN GOD PETER LORD BISHOP OF WINTON,
ON THURSDAY THE 24TH OF OCTOBER, 1688.

November 1, 1688. This may be printed.

On Tuesday the 16th of this instant October, was fixed upon the college-gates and chappel doors, a citation from the bishop of Winton in Latin, (and not injudiciously, for the mother tongue would have been fitter for babes than scholars) to re-call Dr. Hough, the former fellows, demies, &c. by the second of November following, which citation was guarded by Robert Garduer, late porter, who, as he first left the college, so he first returned to it. But this citation together with the bishop's mind, being altered according to a second information, he their restorer, as well as visitor, was sooner received, viz. on Saturday, October the 20th (no doubt for his master's sake) more like the king than his representative; which gave so great satisfaction to the people, that their joy ran over, the musick of the bells being outdone by humms and huzzahs. Thus being attended by more than 300 gentlemen on horseback, and in several coaches, as also by an innumer-

able company of spectators on foot from Magdalen College to his lodgings at St. John's, he received his first general salute.

But this sun-shine was soon eclipsed; for the next morning by seven of the clock he was remanded by an express, to wait upon and pay a visit to his majesty. This was very pleasing to some Roman Catholics, who, what they wished, easily believed, viz. That the king had recalled the commission, as well as the commissioner.

But on Wednesday following, we were well satisfied, that the king had more kindness for our church, than to answer their expectations, on which day (having before paid his obedience to the king) he privately surprised, and condescended again to visit us.

On Thursday, the 24th of October, about ten in the morning, he made his first visit to Magdalen College, the president, fellows, demies, &c. attending upon, and answering him in their formalities. At his entrance into the quire, having heard an excellent congratulatory speech from Dr. Baily, performed divine service; so devoting himself first to God, he proceeded to execute his office as visitor, the prologue of which was in short to this effect:

'That since his majesty of his gracious clemency was pleased to commission me to restore you the former proprietors of this foundation; in obedience to this command I am come to reinstate you accordingly, resolving to do it legally and statutably.'

From the chapel they were adjourned to the hall, where his lordship not without great applause, made an incomparable speech, a very seasonable piece of advice, consisting chiefly of loyalty and unity: by which he merited as great a trophy for his learning, as he did before for his courage.

Then calling for the college statute book, the statute for visitation was read; after which calling for the buttry book, and tearing out the last weeks names of the Roman Catholic fellows, &c. he gave orders to re-inscribe all the old ones, except Mr. Charnock and two demies, who were preferred since to other fellowships. Then calling them over in order, his lordship published and declared Dr. Hough to be the head or president, and the rest the true legal and statutable members of that foundation, and none others: for which good service Dr. Hough, one who might plead the best desert, as well as propriety to this presidentship, in behalf of the rest, returned his lordship a handsome compliment, in a short but pithy speech.

From hence his lordship was conducted to the visitor's lodgings, where was provided a splendid entertainment: Dr. Hough thereby shewing as great respect to the king's commissioner as he could have done to himself.

In the evening the bells expressed the people's satisfaction: bonfires in the town added great pomp to this celebration.

Having now bid farewell to Magdalen Col-

lege, his lordship was on Friday and Saturday at Corpus Christi, New College and Trinity, who paid their respect to him in three splendid entertainments. On Sunday he was entertained with two university sermons, a repast for his soul, as the others for his body. The next morning he departed homewards, having received ample testimony of the university's loyalty and generosity. Then follow the names of the president, vice president, fellows, demies, chaplains, clerks, servants, and choristers of the college as entered in the buttery book by the bishop.*

In Mr. Gutch's Introduction to the 'Collectanea Curiosa,' is inserted as from Roger North's MS. Papers under his own hand, the following passage:

"I gave him (Sancroft) a paper or discourse upon the high commission, soon after issued, which deprived the bishop of London. This good man escaped that storm, because he was provided, but not to do, as the bishop did, plead to the jurisdiction, and being overruled, plead not guilty, and go to fending and proving, and at length received their judgment. But he was resolved, if he had been cited, to have brought his protestation (which he kept ready drawn by him) and delivered it to them, and went his way, and never obeyed any sentence, but to defend himself at common law, upon the nullity of their court. This was known, and for that reason, he was not cited. The other way was to deliver up the cause. For it was not to be doubted, they would judge for their own jurisdiction, and the defending after was owning it, as much as before.

"And the like was at Magdalen college: they should not have appeared further, than to protest. The common law and juries would have defended the freeholds, and such mistaken proceedings as these were one means to mislead the king: whereas a stout, regular opposition, as the archbishop intended, would probably have stopt the career.

"After this the archbishop was threatened with a *premunire*, if he did not confirm bishops without taking the test. I gave him a discourse of *premunire*, so full and particular, with the very forms at large, that he thanked me for it, and said, he found by the manner, it was done with a particular good will to him, and to instruct him for his safety."

* Burnet tells us that this bishop had been a captain during the wars and had been Middleton's secretary, when he was sent to command the insurrection that the highlanders of Scotland made for the king in 1653. Burnet describes him as knowing very little of divinity or any other learning, and weak to a childish degree.

On the subject of the restoration of Magdalen college, Kennet has the following passages:

"It soon appeared how little the nation was to depend upon these hasty and forced concessions of the king. On Oct. 16, the bishop of Winchester caused a citation to be fixed on the gate of Magdalen-College, to recall Dr. Hough, and the former fellows of that society, by the second of November following; but an account coming that very post, that the Dutch fleet had suffered very much in a storm, and that they would hardly be able to put to sea again till the spring, the bishop upon a frivolous pretence was recalled to London, and the restoration of the College deferred. Yet soon after, that news being contradicted, and the Dutch fleet reported to be in a sailing-posture, the affection to the church of England revived, and so the business of the College was effected on the 24th of that month. This passage is the more remarkable, because it lost king James many friends, and lessened him in his character and interest, as if his politics were to change with the wind, and as news varied he was playing fast and loose with his subjects."

"One of the now fellows of Magdalen college, becoming afterwards rector of Slinbridge in the county of Gloucester, published a sermon on St. Barnabas day, in 1713, in the preface whereto he tells us, 'I happened to be fellow of Magdalen college,—when their blind and greedy zeal began with some of the heads of the university, and a society thereof.—All the rest must soon have taken their turn likewise out of their freeholds, had there not been a Protestant wind. Thereby hangs a tale, which hath not been told publicly, that I know of; and I think it not unseasonable to tell it now, that we may thence learn how to trust Popery another time. When the prince of Orange, our late sovereign of glorious memory, was almost ready to embark, a kind of general intimation was dispatched after us, to return from the several counties whither we were sent a grazing:—But when some of us were come back within four or five hours of the university, a certain notice was sent us on the road, that we need not make much haste, for that the wind was changed at court. But when after some few days, it was feared again there that the prince would shortly arrive, we might go forward; and the bishop of Winchester (the local visitor) was sent down to reinstate us in our college: But his lordship had scarce refreshed himself, before a courier came and beat up his quarters, and required his return to court, without restoring us to our own again: Though it was done at last, when there was a Protestant or rather Providential, wind again.'"

356. The Trial of ROWLAND WALTERS, DEARING BRADSHAW, and AMBROSE CAVE, gent. (for murdering of Sir Charles Pymm, bart.) at the Sessions held at the Old-Bailey, before the Right Hon. Sir John Shorter, knt. Lord-Mayor of the City of London, and Sir Bartholomew Shower, knt. Recorder of the same City; together with others his Majesty's Justices of Peace for the City of London, and County of Middlesex: 4 JAMES II. A. D. 1688.

June 1, 1688.

Clerk. CRYER, make proclamation.

Cryer. O yes, O yes, O yes!

Clerk. Keeper of Newgate, bring the prisoners to the bar. (Which was done).

Clerk. You the prisoners at the bar, those men whom you shall hear called, and personally appear, are to try between our sovereign lord the king, and you who are arraigned, upon your several lives and deaths: if you shall except against any one of them, you must speak before they be sworn.

Clerk. Cryer, call Henry Dyer.

The jurors sworn are as followeth: Henry Dyer, Giles Baggs, Matthew Jerman, Timothy Waldoe, Richard Chase, Samuel Burgess, William Villiers, John Frith, John Hill, Obadiah Hickman, John Read, Francis Willis. Who were all sworn.

Clerk. Cryer, count these, twelve good men and true.

Clerk. Cryer, make proclamation. (Which was done).

Clerk. You gentlemen of the jury, look upon the prisoners at the bar, and hearken to their charge; they stand indicted by the names of Rowland Walters, Dearing Bradshaw, and Ambrose Cave, gentlemen, for that they not having the fear of God before their eyes, but being instigated and seduced by the devil, and their own wicked hearts, on the fourth day of May, in the fourth year of the reign of our sovereign lord king James 2, in the parish of St. Nicholas Cole-abbey, in and upon sir Charles Pymm, bart. feloniously, wilfully, and of their malice afore-thought, did make an assault; and that he the said Rowland Walters, having then and there in his right hand, a certain rapier made of iron or steel, of the value of about 5s. him the said sir Charles Pymm in and upon the right side of him the said sir Charles Pymm, a little above the right pap, did strike and thrust as aforesaid; giving him the said sir Charles Pymm, a little above the right pap, one mortal wound of the breadth of one inch, of the depth of ten inches; and that they the said Dearing Bradshaw, and Ambrose Cave, were present aiding, abetting, and assisting him the said Rowland Walters, in the perpetra-

tion of the said wilful murder of him the said sir Charles Pymm. So that they three, the prisoners at the bar, with malice afore-thought, did intentionally kill and destroy and wilfully murder him the said sir Charles Pymm, against the peace of our sovereign lord the king, his crown, and dignity, and against the form of the statute in that case made and provided. Upon this indictment they have been arraigned, and have hereunto pleaded not guilty, and for their trial, have put themselves upon God and their country, which country you are. Your business is to enquire, whether they, or either of them, committed this felony and murder as aforesaid; if you find them, or either of them, guilty of the said wilful murder, you are to enquire what goods and chattels they, or either of them, had at the time of the committing of the said wilful murder; but if you find them not guilty, you are to say so; and hear your evidence.

Mr. Walters. My lord, I humbly desire these gentlemen may be tried before me.*

Court. That cannot be, Mr. Walters, because you are all three put into one indictment.

Counsel for the king. My lords, and you gentlemen of the jury, I am here retained a counsel for the king, against the prisoners at the bar, who all three stand indicted for the murder of sir Charles Pymm, bart. in the parish of St. Nicholas Cole-abbey, thrusting him through the body near the right pap, giving him a mortal wound, of which he then and there instantly died. The other two prisoners stand indicted for aiding, abetting, and assisting him the said Walters in the said murder.

Another Counsel for the king. My lords, this murder fell out on the fourth day of May last, after this manner, viz. The said sir Charles Pymm, one Mr. Mirriday, Mr. Neale, and sir Thomas Middleton, and others dined at the Swan tavern upon Fish-street-hill; after they were come into the house they went up stairs; after which the prisoners at the bar came into the house and took another room to dine of beef and other things. But one of sir Charles's company desired to have a plate of it; upon which Mr. Cloudsley told them

* See vol. 1, p. 1051.

some gentlemen had bespoke it for dinner ; but he said he would get them a plate of it, which was sent up, and ordered to be reckoned into Mr. Walters the prisoner's bill. After dinner they drank their healths, and returned them thanks for their beef ; and towards the evening sir Charles Pymm and his friends came down stairs, and met the prisoners at the bottom, and Mr. Cave asked them how they liked the beef that was sent up ? upon which one in the company answered, and told them, They did not send it, for they had paid for it. Upon which farther words arose, and Mr. Bradshaw drew his sword, and fell upon sir Charles Pymm ; but he got out into the street. After which Mr. Walters came forth and plucked sir Charles Pymm by the arms, and forced him to fight with him, saying, Here is my hand, and here is my sword ; and as soon as he was in the street he received this mortal wound, and so fell down dead. After this, Mr. Walters took him by the nape of the neck, and dashed his head upon the ground, and cried out God damn you, you are dead : and said farther, Let the sword alone in his body. My lord, this shall be proved to be done without any manner of provocation ; and if so, I hope you, gentlemen of the jury, will find him guilty of wilful murder.

Clerk. Call Mr. Mirriday, Mr. Neale, Mr. Palms, and Mr. Bridges. (Who were sworn).

Mr. Mirriday. My lord, on the 4th day of May last, on a Friday, sir Charles Pymm, myself, and these gentlemen here in court, came to dine at the Swan-tavern in Old Fish-street. We asked for meat, and Mr. Cloudsley, the man of the house, told us, we might have fish, for he had no meat, but what was bespoke by Mr. Walters and his company. We desired him to help us to a plate of it, if it might be got, which we had brought up stairs ; after dinner we drank the gentlemen's healths that sent it, and returned them thanks for it. A while after sir Thomas Middleton went away, and about an hour after that or thereabouts, sir Charles Pymm and the rest of us came down to go away ; and when we were in the entry, Mr. Cave met us and asked sir Charles how he liked the beef that was sent up ; who answered, We did not know you sent it, for we have paid for it. Then the boy that kept the bar told us, that he did not reckon it in the bill ; upon which Mr. Cave seemed to take it ill : But, my lord, I cannot be positive whether Mr. Bradshaw and Mr. Palms were at any words. Then I took Mr. Cave to one side into the entry, and he thought that I had a mind to fight him, but I did what I could to make an end of the quarrel. [Upon which the Court highly commended Mr. Mirriday.]

Court. This was in the entry, but where was sir Charles Pymm ?

Mr. Mirriday. He was then in the entry.

Court. Where was Mr. Walters ?

Mirriday. He was at the door, my lord ; but I cannot swear positively to any particular passage as to the murder ; but Mr. Walters

called sir Charles Pymm rogue, and gave him very ill words, and I saw him take him by the neck, and force his head downwards, and said, God damn him, he is dead, to the best of my remembrance, my lord. Then, I took sir Charles up in my arms, and pulled the sword out of his body, and then Mr. Walters said, God damn him, let it stay in his guts, or in his body, or words to that effect.

Court. Was Mr. Cave or Mr. Bradshaw at the place where sir Charles fell ?

Mirriday. No, my lord, they were in the entry scuffling there.

Court. What came of Mr. Walters afterwards ?

Mirriday. My lord, he stayed a little till I had pulled the sword out of his body, then he ran away.

Court. Did they draw their swords in the entry ?—*Mirriday.* I cannot tell that.

Court. Did you see them draw their swords ?

Mirriday. I cannot say sir Charles Pymm's sword was drawn, but I saw Mr. Walters draw his sword in the street.

Court. Do you know whether Mr. Walters was wounded or no ?

Mirriday. I do not know that, for I did not see the wound given.

Court. Mr. Walters, will you ask him any questions ?

Walters. Yes, my lord : Mr. Mirriday, what did you say to sir Charles Pymm, in the fish-monger's shop ? Did you not say, Go, and fight him, and I will be your second ?

Mirriday. My lord, I do not remember one word of that.

Court. Mr. Mirriday, were you in any fish-monger's shop ?

Mirriday. Yes, my lord, I was there ; but I do not remember one word between Mr. Walters and sir Charles, and, as I hope for salvation, I said no such thing ; and that's all I have to say.

Clerk. Cryer, call Mr. Neale.

Mr. Neale. My lord, I went and met with these gentlemen that dined with us at the aforesaid tavern, and we had fish and two beef marrow-bones, and a plate of beef for dinner ; and when we came down to go away, these gentlemen met us, and said, 'God damn you, how did you like the beef?' which raised a quarrel among us ; but immediately, after I thought it was all over, I saw Mr. Walters run sir Charles Pymm through.

Court. Was his sword drawn ?

Neale. Yes, both of their swords were drawn.

Court. Where was Mr. Bradshaw ?

Neale. I cannot tell where he was directly : but, my lord, I heard sir Charles Pymm say nothing to Mr. Walters.

Clerk. Cryer, call Mr. Palms.

Palms. My lord, after the reckoning was paid, we came down stairs, and called for a coach, and because it rained, there was none to be had ; and these gentlemen followed us into the entry, and so words to the same purpose as aforesaid passed between them ; after which, I

met Mr. Bradshaw, and we fell out in the fish-monger's shop.

Court. Who began?

Palms. I know not, I cannot remember that.

Court. Were you not in drink?

Palms. My lord, we drank nine or ten bottles among six of us; after which Mr. Bradshaw and I drew our swords, and then Mr. Mirriday came and took him away from me into the entry, and in the mean time, while we were talking in the entry, the business was done.

Court. Were your swords put up again?

Palms. I had put up mine.

Counsel for the king. Did you take notice of what passed between Mr. Walters and sir Charles Pymm?

Palms. I heard nothing of high words.

Court. Yes, yes, it was all about the beef.

Clerk. Cryer, call for Mr. Presland, the bar-keeper.

Presland. My lord, I made the bill for the reckoning.

Court. Did you put the beef into the bill?

Presland. No, I did not; when they came down stairs, the coach was fetched for them, viz. for sir Charles Pymm and his company, and the reckoning was paid. When sir Charles Pymm and the rest of his company came down into the entry, Mr. Walters came out of the room, &c. and I heard them argue about their dinner, and they came to me, and asked me what was to pay for beef, and I told them nothing.

Court. Did you see the man killed?

Presland. My lord, I did not see him killed, not I.

Court. Who was it that quarrelled with the coachman?

Presland. My lord, Mr. Neale quarrelled with the coachman about his staying: the coachman refused going with him, because his horses were hot.

Clerk. Cryer, call Mr. Brummidge.

Brummidge. My lord, between eleven and twelve o'clock in the morning on the 4th of May last, sir Charles Pymm came to Mr. Cloudsley's door in a coach, and asked him what he might have for dinner; who told him that he might have a mullet and some smelts, and I sold a mullet to Mr. Cloudsley: so sir Charles went to the Exchange, and I saw no more of him till I saw him killed. While I was in the house, came in one Mr. Allen and others, to enquire for sir Charles Pymm, and Mr. Cloudsley told them that he had bespoke a dinner, viz. a mullet and some smelts; and was gone to the Exchange; but one of the gentlemen desired a bit of the beef that was at the fire, so Mr. Cloudsley said he would get a plate for him. So I went to the door, and the coachman came, and his horses being hot, he desired to go away because it rained; but Mr. Neale put his foot-boy into the coach, and the coachman after pulled his boy out of the coach, and drove away. And after that, I saw Mr. Cave and others come to the door, and jostled each other into the next shop, and were at very

high words; and so afterwards they went into the entry again, and sir Charles Pymm and Mr. Walters came out without the door, the latter of which said, 'Here is my hand, and here is my sword;' but they returned both in again into the tavern, and within two minutes came out again, and I saw Mr. Walters thrust sir Charles Pymm through his back.

Court. Did you see him do any thing to him after he was down?

Brummidge. No, my lord, I did not.

Court. Did you not say, that Walters went over the kennel, and drew his sword, and stood upon his guard, and then you say, that you saw sir Charles Pymm come out with his sword drawn; was his sword drawn?

Brummidge. I did not see him draw it; but it was drawn.

Court. Where did he receive his wound?

Brummidge. Within a foot of the kennel; I was but a little way off, but I did not see him beat his head against the ground.

Clerk. Cryer, call Mr. Fletcher.

Fletcher. My lord, on Friday in the evening on the 4th of May, I was going by the tavern-door about seven o'clock at night, and I heard a noise, and a talking of going to the other end of the town to be merry: and turning myself back to hearken further, I saw Mr. Walters come out of the door, and draw his sword, and sir Charles Pymm came out, and drew his sword; and presently Mr. Walters's sword was through sir Charles Pymm's body almost a foot; and he fell down crinkling immediately; and when he was down, I saw Mr. Walters hit him in the kennel, and take him by the nape of the neck, and after cried, 'God damn him, let the sword stick in his body;' and afterwards I saw Mr. Mirriday pull the sword out of his body.

Court. Did you see Mr. Bradshaw there when sir Charles fell?

Fletcher. No, my lord, I saw none there but Mr. Walters and sir Charles, they were out of doors, and the rest were in the entry.

Mary White and Sarah Webb were called, who could give little or no evidence as to matter of fact, as concerning the death of sir Charles; and being timorous, could not see what they might have seen.

Clerk. Cryer, call Mr. Allen.

Allen. I know but very little of the matter, but that there was a plate of beef sent up to us, but we knew not from whence it came, till afterwards the drawer brought us word that the gentlemen below had sent it up; after which, we drank their healths, and returned them thanks for it. After which, I went to the coffee-house hard by, and sat about half an hour, and presently heard a cry of murder, and I came down, and saw sir Charles Pymm lying with a wound in his body, and another in his head, but I did not know who it was, not then; but I asked who did this business, and exhorted the people to take them as soon as they could.

Court. I think you said that Mr. Bradshaw's sword was drawn?

Allen. Yes, it was, but I believe that he did not know that sir Charles Pymm was killed.

Mrs. Sheepwash was called, but could depose nothing material.

Court. Mr. Walters, you have been here indicted, together with Mr. Bradshaw and Mr. Cave, for the murder of sir Charles Pymm, knt. and bart. you have heard what charge hath been laid against you, which hath been a very strong one, and now it behoves you to make your defence as well as you can.

Walters. My lord, I was no way the occasion of the quarrel; when I came thither, I asked for some meat, and having not eaten all the day before, we had a piece of beef, of which sir Charles Pymm and his company had some, who afterwards drank our healths, as I was informed. For my part, my lord, I never saw the gentleman before in my days: my lord, I am very sorry it should be my misfortune to kill him in the quarrel. Sir Charles Pymm asked me, saying, 'God damn you, Sir, what have you to do to meddle?' I went presently, my lord, to a fishmonger's, where Mr. Mirriday was, and sir Charles Pymm came, and Mr. Mirriday said to him, sir Charles, 'Damn you, Sir, go and fight him, and I will be your second.' And presently they came upon me, and I drew my sword in my own defence, and he ran me eight inches into the thigh, and at the same pass, I had the misfortune, my lord, to run him into the body.

Court. Would you ask Mr. Mirriday any questions?

Walters. Yes, my lord. Mr. Mirriday, did you see me strike sir Charles's head upon the ground?

Mirriday. No, Sir, I did not see that; neither did I say any such thing in the fishmonger's shop, as to bid sir Charles fight you.

Clerk. Cryer, call Matthew Perin.

Perin. My lord, all that I saw of the business was, that when the coachman was called to the door, Mr. Neale came and threatened him if he did not stay; then Mr. Cave and Mr. Bradshaw were in the entry, and I heard them discourse about beef; and some of them said, You give us beef, and make us pay for it; and there was answer made, They were rascals that said so, for they did not. There was one of the gentlemen in our shop hearing of it, said, Let me come to him, I will fight him.

Court. Do you know the man?

Perin. No, I do not know who it was.

Walters. I was wounded at the same time, my lord.

Court. That is admitted of.

Walters. Let him be asked, whether I beat the head against the ground.

Perin. No, my lord, I did not see him do that.

Court. He had a wound, the question is how he came by it; whether he might not fall upon it himself, it was a slanting wound?

Walters. Pray, my lord, let sir Charles's sword be seen, all blood. [But that gave no satisfaction on either side.]

Court. Mr. Bradshaw, what have you to say for yourself?

Mr. Bradshaw. My lord, I was there, but I know nothing of the death of sir Charles Pymm, nor how he came by it; there were some words arose amongst us, and I desired them to cease, for fear a farther quarrel should ensue upon it.

Court. Mr. Cave, what have you to say?

Mr. Cave. I know no more of the matter than this gentleman saith: I saw not sir Charles Pymm killed.

Clerk. Cryer, make proclamation.

Cryer. All people are commanded to keep silence upon pain of imprisonment.

Then Mr. Baron Jenner summed up the evidence as followeth:

Baron Jenner. Gentlemen of the jury, you have three persons indicted, viz. Mr. Walters, Mr. Bradshaw and Mr. Cave, for murdering sir Charles Pymm, bart. and have had several witnesses called for the king, against the prisoners at the bar; the first of which was Mr. Mirriday; and he gives you this account, and it is all that each and every one gives, and it agrees on all sides; and he tells you, that all those gentlemen were to dine at Mr. Cloudsley's, at the Swan-Tavern in Old Fish-street; and that they were there at dinner, it is very plainly proved. And being there, it seems that some of those gentlemen had bespoke a fish dinner, some flesh, and had some, viz. a plate of beef; and he tells you also, that when dinner was over, some words did arise concerning the reckoning, and that one of the companies were got down stairs in the entry, where a further quarrel did arise. Mr. Mirriday tells you further, that Mr. Bradshaw and he quarrelled, so there was a scuffle in the entry; after which things were pretty well quieted there; in comes Mr. Walters and sir Charles Pymm, and while Mr. Mirriday was securing the first quarrel, they, viz. sir Charles Pymm and Mr. Walters were got out at the door, and sir Charles was stooping down, and Mr. Walters was pushing upon his neck and throwing him down.

So said Mr. Mirriday, and when he went to take the sword out of his body, he saw him a dying man.

The next evidence was Mr. Neale, and he observes to you, that one of the gentlemen did say, that the quarrel was not intended against them; and he gives an account of the story, how that it was about the beef; how that sir Charles was run through by Walters, but he did not see him knock his head against the ground.

Mr. Palms gives the like account, and saith, that whilst they were a scuffling in the entry, sir Charles was killed at the door.

The next evidence is the drawer, who tells you of a squabble that Mr. Neale had with the

coachman at the door, and how that there was left four of the gentlemen behind, and that the coachman was unwilling to wait because it rained, his horses being hot, they might catch cold; whereupon he put his footboy into the coach, and threatened the coachman if he went away: this was before they fell out about the meat.

The next evidence was one Mr. Brummidge the fishmonger, he gives the same account, how that a quarrel was amongst them, and how that Mr. Walters was on one side of the kennel, and sir Charles Pymm on the other side, and there they stood with their swords drawn; and as soon as they came close, they wounded each other, and sir Charles Pymm was killed; but he did not see his head knocked against the ground.

Comes Fletcher, my lord mayor's officer, and he tells you, that he was going by the door home into Bread Street, and he sees a man that was wounded stooping down; and he swears that Mr. Walters took him by the nape of his neck, and knocked his head against the ground, and heard him swear, let the sword stick in him. Sarah Webb and another woman speak it to be in the like manner; and one of them talks of Mr. Walters's pulling sir C. Pymm out of the entry before he would come out.

Last of all, gentlemen, here was Mr. Allen, one of their company, who went away to the coffee house, and hearing murder cried out, he came and found sir Charles Pymm killed and quite dead. This, gentlemen, is the evidence that you have heard as near as I can give it you.

Now, for the prisoner, Mr. Walters, he would have you believe, as if sir Charles had struck him before he drew his sword; but he has not proved it: likewise speaks of Mr. Fletcher, but he does not remember that sir Charles Pymm struck him before he drew: but so it was, gentlemen, there was a quarrel, in which that honourable and worthy gentleman, sir Charles Pymm, lost his life.

Now for Mr. Bradshaw, he confesseth, that there was a quarrel; but he saith, that he did not know when or how sir Charles Pymm was killed; and for Mr. Cave, I do not find any thing objected against him, nor either of them.

Now, gentlemen, I must tell you what the law is in this case: first of all to begin with Mr. Walters, so as it fares with Mr. Walters, so you may be guided to deal with the other two. Now it hath not been made appear by any of the evidence that you have heard, that there was any premeditated malice between

them, for they were never in company before, and knew not each other; so that there could be no manner of malice from him in particular.

The next step, Gentlemen, is, here is nothing that can impute a general malice upon Mr. Walters: for if I had no design to kill a man, and kill another with whom I do not quarrel, that cannot be any premeditated malice; but I rather think that there was a little heat of wine amongst them: and this whole action was carried on by nothing else but by a hot and sudden frolic, and I am very sorry that it should fall upon such a worthy gentleman as he was. And if there was no malice premeditated, then he can be found guilty of nothing but manslaughter; and as for the other two, they must be totally acquitted. If I have erred in the summing up of these evidences, or mistaken myself in any point, here are my brothers to help me.

Then the gentlemen of the jury withdrew for about the space of half an hour, and returned into court upon a scruple of conscience; one amongst them spoke to the court as followeth:

Juryman. My lord, we are not satisfied in our consciences concerning the death of sir Charles Pymm; we find in it malice forethought; because after he had run the sword through his body, he was not satisfied with that, but must knock his head against the ground; so we do take it, that the said sir Charles Pymm was maliciously murdered.

Justice Allibone. Gentlemen of the jury, I shall endeavour to direct you in this case, and tell you what the law saith, That it cannot reach a man's life, where no prepense malice is proved; that there is none proved, appears very plain to me, and I hope also to you, because it hath been proved that those gentlemen, viz. the prisoners at the bar, and the deceased, had never been in company before. Gentlemen, you are upon your oaths to serve the king as jurymen; and I, as a judge, am upon my oath to try the cause as well on the behalf of the living as the dead. So that upon the whole matter, gentlemen, this can be called nothing else but a storm, an ungoverned storm that such men are subject to; so that it does not reach precedent malice, but subsequent passion; which sad passion was continued to that height, that sir Charles Pymm in the midst of it lost his life.

Then the Jury went out again for about a quarter of an hour; and returning, brought in Mr. Walters guilty of manslaughter; but the other two were acquitted.

357. Proceedings had in order to prove the GENUINENESS of the Child alleged to be the Son of King James the Second and his Queen Mary D'Este, Princess of Modena, born June 10th, 1688.* [London: Printed† by Charles Bill, H. Hills, and Th. Newcombe, Printers to the King's Most Excellent Majesty, 1688.]

At the Council Chamber in Whitehall, Monday the 22d of October, 1688.

THIS day an extraordinary Council met, where were likewise present by his majesty's desire and appointment, her majesty the queen Dowager, and such of the Peers of this kingdom, both Spiritual and Temporal, as were in town. And also the Lord Mayor and aldermen of the city of London, the Judges and several of their majesties Council learned, hereafter named:

The KING's most excellent Majesty;

Her Majesty the Queen Dowager in a chair placed on the King's right hand.

His R. H. Pr. George of Denmark,

Lord Chancellor,

Lord President,

Lord Privy Seal,

Duke of Hamilton,

Lord Chamberlain,

Earl of Oxford,

Earl of Huntingdon,

Earl of Peterborow,

Earl of Craven,

Earl of Berkeley,

Earl of Rochester,

Earl of Moray,

Earl of Middleton,

Earl of Melfort,

Earl of Castlemain,

Viscount Preston,

Lord Bellasyse,

Lord Godolphin,

Lord Dover,

Mr. Chancellor of the Exchequer,

Master of the Rolls,

Lord Chief Justice Herbert,

Sir Thomas Strickland,

Sir Nicholas Butler,

Mr. Titus.*

Lord Archbishop of Canterbury,

Duke of Norfolk,

Duke of Grafton,

Duke of Ormond,

Duke of Northumberland,

Marquis of Halifax,

Earl of Pembroke,

Earl of Salisbury,

Earl of Clarendon,

Earl of Cardigan,

Earl of Ailesbury,

Earl of Burlington,

Earl of Litchfield,

Earl of Feversham,

Earl of Nottingham,

Viscount Newport,

Viscount Weymouth,

Bishop of London, [Compton.]

Bishop of Winchester, [Mews.]

Bishop of Rochester, [Sprat.]

Bishop of Chester, [Cartwright.]

Bishop of St. Davids, [Watson.]

Lord North,

Lord Chandos,

Lord Montagu,

Lord Herbert of Cherbury,

Lord Vaughan Earl of Carberry,

Lord Colepeper,

Lord Churchill,

Lord Waldegrave.

The Lord Mayor and Aldermen of the city of London.

Lord Chief Justice of the King's Bench.

Sir Robert Wright.

Justices of the King's Bench.

Sir Thomas Powel,

Sir Robert Baldock.

Justices of the Common Pleas.

Sir Thomas Street,

Sir Edward Lutwich,

Sir Thomas Jenner.

* Hume notices that in the year 1682 the queen, then duchess of York, had been pregnant, and rumours were spread that an imposture would at that time be obtruded upon the nation. 'But' he adds 'happily the infant proved a female, and thereby spared the party all the trouble of supporting their improbable fiction.' See the passage cited from Dalrymple, at the latter end of this Case.

There is in Wellwood's Memoirs, a curious anecdote of an occurrence at Rome relating to the queen's pregnancy. See lord Castlemaine's Case, A. D. 1689.

† On a single sheet: for the use of which I am indebted to the kindness of Mr. Hargrave.

* It should seem that the persons mentioned in this first list were all who attended in the character of Privy Counsellors. See the Entry in Clarendon's Diary, under date October 22d, inserted below.

Barons of the Exchequer.

Sir Richard Heath,
Sir Charles Inglehy,
Sir John Rotherham.

His Majesty's Serjeants at Law.

Sir John Maynard,
Sir John Holt,
Sir Ambrose Philips.

His Majesty's Attorney General.

Sir Thomas Powis.

His Majesty's Solicitor General.

Sir William Williams.

Sir James Butler.

The Queen's Attorney.

Mr. North.

The Queen's Solicitor.

Mr. Montagu,

Sir Charles Porter.

To whom his Majesty spake to this effect :

My Lords ;

I have called you together upon a very extraordinary occasion ; but extraordinary diseases must have extraordinary remedies. The malicious endeavours of my enemies have so poisoned the minds of some of my subjects, that by the reports I have from all hands, I have reason to believe, that very many do not think this son with which God hath blessed me, to be mine, but a supposed child. But I may say, that by particular providence, scarce any prince was ever born where there were so many persons present.

I have taken this time to have the matter heard and examined here, expecting that the prince of Orange with the first easterly wind will invade this kingdom. And as I have often ventured my life for the nation before I came to the crown, so I think myself more obliged to do the same now I am king ; and do intend to go in person against him, whereby I may be exposed to accidents, and therefore I thought it necessary to have this now done, in order to satisfy the minds of my subjects, and to prevent this kingdom's being engaged in blood and confusion after my death, desiring to do always what may contribute most to the ease and quiet of my subjects, which I have shewed by securing to them their liberty of conscience, and the enjoyment of their properties, which I will always preserve.

I have desired the queen dowager to give herself the trouble to come hither, to declare what she knows of the birth of my son, and most of the ladies, lords, and other persons who were present, are ready here to depose upon oath their knowledge of this matter.

Whereupon the *Queen Dowager* was pleased to say :

That when the king sent for her to the queen's labour, she came as soon as she could, and never stirred from her till she was delivered of the prince of Wales. CATHERINA, R.

And the following DEPOSITIONS were all taken upon Oath.

Elizabeth Lady Marchioness of Powis, deposeth, That about the 29th of December last, the queen was likely to miscarry ; whereupon she immediately went unto her, and offered her some effectual remedies, which are made use of on the like occasion, which the queen ordered this deponent to acquaint the doctors with. The day following the queen dowager sent this deponent to see how the queen did ; who replied, she had a pretty good night, and did think she had quickened, but would not be positive till she felt it again ; that after this, the deponent did frequently wait on the queen in the morning, and did see her shift her several days, and generally saw the milk, and sometimes wet upon her smock. That some time after this deponent went into the country, and came not up till a few days before the queen was brought to bed ; and from the time of this deponent's return, she saw the queen every day till she was brought to bed, and was in the room a quarter of an hour before, and at the time of her delivery of the prince, by Mrs. Wilks her majesty's midwife, which this deponent saw, and immediately went with the prince, carried by Mrs. Delabadie, into the queen's little bedchamber, where she saw sir Thomas Witherly sent for by the midwife, who gave the child three drops of something which came into the world with him, which this deponent saw done ; and this deponent doth aver this prince to be the same child which was then born, and that she has never been from him one day since.

ELIZA. POWIS.

Anne Countess of Aran, deposeth, That she went to the queen from Whitehall to St. James's, as soon as she heard that her majesty was in labour ; when she came she found the queen in bed, complaining of little pains ; the lady Sunderland, lady Roscomon, Mrs. Labadie, and the midwife, were on that side of the bed where the queen lay ; and this deponent, with a great many others, stood on the other side all the time till the queen was delivered ; as soon as her majesty was delivered, she said, O Lord, I don't hear the child cry ; and immediately upon that, this deponent did hear it cry, and saw the midwife take the child out of the bed, and give it to Mrs. Labadie, who carried it into the little bedchamber, where she this deponent followed her, and saw that it was a son, and that likewise she the deponent hath several times seen milk run out upon the queen's smock during her being with child.

A. ARAN.

Penelope Countess of Peterborow, deposeth, That she was often with the queen while her majesty was last with child, and saw the milk often upon her majesty's smock, when she the deponent took it off from the queen, and often saw her majesty's belly so as it could not be otherwise but that she was with child. That

the said deponent stood by the bedside on the 10th of June last in the morning, while the queen was delivered of the prince of Wales.

P. PETERBOROW.

Anne Countess of *Sunderland*, deposeth, That June the 10th, 1688, being Trinity Sunday, the deponent went to St. James's chapel at eight o'clock in the morning, intending to receive the sacrament, but in the beginning of the communion service, the man which looks to the chapel came to the deponent and told her, she must come to the queen; the deponent said she would as soon as prayers were done. In a very little time after, another man came up to the altar to the deponent, and said, the queen was in labour, and the deponent must come to her majesty, who then went directly to the queen's bedchamber. As soon as the deponent came in, her majesty told her, this deponent, she believed she was in labour. By this time the bed was warmed, and the queen went into bed, and the king came in. The queen asked the king, if he had sent for the queen dowager: He said he had sent for every body. The said deponent stood at the queen's bolster, the lady Roscomon, Mrs. Delabadie, and the midwife on that side of the bed where the queen was delivered. After some lingering pains, the queen said, she feared she should not be brought to bed a good while; but enquiring of the midwife, she assured her majesty, that she wanted only one thorow pain to bring the child into the world; upon which the queen said, it is impossible, the child lies so high, and commanded this deponent to lay her hand on her majesty's belly to feel how high the child lay, which the deponent did, but soon after a great pain came on at past nine o'clock, and the queen was delivered, which the midwife by pulling the deponent by the coat, assured her was a son, it being the sign she told the deponent she would give her, the queen having charged her not to let her majesty know presently, whether it was son or daughter. As soon as the midwife had given the deponent the sign, the deponent made a sign to the king that it was a son. When the midwife had done her office, she gave the child to Mrs. Delabadie, which was a son, and she carried it into the little bedchamber.

A. SUNDERLAND.

Isabella Countess of *Roscomon*, deposeth, That on the 10th of June last, she stood by the lady *Sunderland* in the queen's bedchamber, while the queen was in labour, and saw the prince of Wales when he was taken out of the bed by the midwife.

I. ROSCOMON.

Margaret Countess of *Fingall*, deposeth,

That she waited on the queen dowager her mistress into the queen's bedchamber at St. James's when the queen was in labour, and stood by the bed's feet when her majesty was delivered of the prince. That the deponent saw the prince carried away into another room, and soon after followed, and saw him in that room.

MARG. FINGALL.

Lady Sophia Bulkely, deposeth,

That she was sent for on Trinity Sunday last past, about eight o'clock in the morning to go to St. James's; for the man that came, said the queen was in labour, and he and others were sent to call every body. That this deponent made as much haste as she could to rise and be drest, but did not get to the queen's bedchamber until a little after nine o'clock, and then this deponent found the queen in her bed, and the queen dowager there set upon a stole, and some of the ladies about her. After this deponent having staid a little while, and thinking the queen in no strong pain, she, this deponent, went out, and, being next to the room where the queen's linen was a warming, heard a noise, and looked to see what was the matter, and finding nobody there, this deponent ran, and found the lord Feversham in the queen's little bed-chamber, who told this deponent the child was just born; this deponent asked him, what is it? His lordship said he could not tell. So this deponent ran on to the queen's bedside; and heard the queen say to the midwife, pray Mrs. Wilks, do not part the child (which signifies, don't cut the navel-string, until the after-birth is come away.) And while the queen was with child this deponent hath heard her majesty command the midwife not to do otherwise, it being counted much the safest way; but to what the queen said just then (to the best of the deponent's remembrance) Mrs. Wilks replied, pray madam, give me leave, for I will do nothing, but what will be safe for yourself and child; the queen answered, do then, and then cried, where is the king gone? His majesty came immediately from the other side of the bed (from just having a sight of the child) and answered the queen, here I am; the queen said, why do you leave me now? The king kneeled on the bed, on that side where the deponent stood, and a little after the midwife said, all is now come safe away: upon that the king rose from the bed, and said, pray my lords, come and see the child: the king followed Mrs. Labadie, and the lords his majesty, into the little bed-chamber, where this deponent followed also, and saw as well as they, that it was a prince, and that Mrs. Wilks was in the right to desire to part the child, for the prince's face, especially his forehead, was blackish, being stunned, as I have seen some other children, when they have just newly come into the world; but God be thanked, in two hours time that he was drest and washed, (which the deponent stayed by and saw done) the prince looked very fresh and well. This deponent doth further add, that all the while, the queen was with child, this deponent had the honour to pay her duty very often mornings and nights, in waiting upon her majesty in her dressing room and bed chamber, and for the last three or four months, this deponent hath often times seen the queen's milk, as well as when this deponent hath had the honour to put on her majesties smock.

S. BULKLEY.

Susanna Lady Bellasyse, deposeth,

That on Trinity Sunday, the 10th of June last, the deponent's servant, seeing the queen dowager's coaches in St. James's at an unusual hour, went and asked the occasion, and was told the queen was in labour, whereupon he came into the deponent's chamber and awaked her, that the queen having come to lodge at St. James's but the night before, they being in a great hurry, forgot to call the deponent as her majesty had ordered; that the deponent made all the haste she could into her majesty's bed-chamber, and found the queen in bed, and Mrs. Wilks her majesty's midwife, sitting by the bedside, with her hands in the queen's bed, the queen asked her, the said midwife, what she thought? Mrs. Wilks assured her majesty that at the next great pain the child would be born; whereupon the king ordered the privy counsellors to be called in; that this deponent stood behind the midwife's chair, and immediately after the queen's having another great pain, the prince was born; that the deponent saw the child taken out of the bed with the navel-string hanging to its belly. That this deponent opened the receiver, and saw it was a son, and not hearing the child cry, and seeing it a little black, she was afraid it was in a convulsion fit.

S. BELLASYSE.

Henrietta Lady Waldegrave, deposeth,

That she was in the queen's bed chamber a quarter of an hour before her majesty was delivered, and standing by the bedside, she saw the queen in labour, and heard her cry out much.

HENRIETTA WALDEGRAVE.

Mrs. Mary Crane, one of the Gentlewomen of the Bedchamber to the Queen Dowager, deposeth,

That she went with the queen dowager to the queen's labour on the tenth of June last, and never stirred out of the room till the queen was delivered. That this deponent did not follow the child when it was first carried out of the room, but staid in the bed chamber, and saw all that was to be seen after the birth of a child. That she the deponent, then went to see the prince and found him look ill, and immediately went to the king, and told his majesty she feared the child was sick; that his majesty went immediately to the prince, and came back and said it was a mistake, the child was very well.

MARY CRANE.

Dame Isabella Wentworth, one of the Gentlewomen of the bed-chamber to the queen, deposeth,

That she often saw the milk of her majesty's breast upon her smock, at which the queen was troubled, it being a common saying, that it was a sign the child would not live. And that she the deponent, did once feel the child stir in the queen's belly while her majesty was in bed, and that she was present when the child was born, and staid till she heard it cry,

VOL. XII.

and then went to fetch vinegar for the queen to smell to, she the deponent heard the queen command the midwife not to tell her of what sex it was, for fear of surprising her majesty. When the deponent brought the vinegar, she did desire to see the child, Mrs. Delabadie having it in her arms. The child looked black, whereupon the deponent desired Dr. Waldegrave to look to it, believing it was not well: that the deponent saw the navel-string of the child cut, and three drops of the blood which came fresh out given to him for the convulsion fits.

ISABELLA WENTWORTH.

Dame Catherine Sayer, one of the Gentlewomen of the Bed-chamber to the Queen Dowager, deposeth,

That she waited on the queen dowager to the queen's labour, and was all the time by the bedside, and stood there till the queen was delivered, and followed the child, when it was carried by Mrs. Delabadie to the little bed-chamber, and took a warm napkin and laid it on the child's breast, believing the child was not well.

CATHARINE SAYER.

Dame Isabella Waldegrave, one of the Gentlewomen of the Bedchamber to the Queen, deposeth,

That she was constantly with the queen, when her majesty was likely to miscarry, and had often seen milk on her majesty's breasts, and was with the queen at the time of her labour with the prince, and saw the prince taken out of the bed, and went after Mrs. Delabadie with the prince in her arms into the little bed-chamber, and was by when the child was shown to the king that it was a son, and this deponent took the after-burthen, and put it into a bason of water, and carried it into the queen's closet.

ISABELLA WALDEGRAVE.

Mrs. Margaret Dawson, one of the Gentlewomen of the Bedchamber to the Queen, deposeth,

That on the tenth of June last, in the morning she was sent for by the queen out of St. James's chapel, where she was at prayers, and that coming up into the queen's chamber, she found her sitting all alone upon a stool by the bed's head, when the queen said to her this deponent, she believed herself in labour, and bid her the deponent, get the pallat bed which stood in the next room, to be made ready quickly for her, but that bed having never been aired, the deponent persuaded the queen not to make use of it, after which the queen bid the deponent make ready the bed she came out of, which was done accordingly. The deponent further saith, that she saw fire carried into the queen's room in a warming pan to warm the bed, after which the queen went into her bed, and that the deponent stirred not from the queen until her majesty was delivered of a son. That she this deponent well remembers, that on the 29th of December last, her majesty was afraid of miscarrying, which was

K

about the time she quickened, and that after the queen had gone two and twenty weeks with child, her majesty's milk began to run, which she the deponent often saw upon her smock, and that the ninth of May her majesty apprehended miscarrying again with a fright.

MARGARET DAWSON.

Mrs. *Elizabeth Bromley*, one of the Gentlewomen of the Bedchamber to the Queen, deposeth,

That she was sick all winter, till a little before Easter last, when she the deponent came into waiting; that from that time till the queen was brought to bed, she the deponent saw the queen put on her smock every morning, by which means she saw the milk constantly fall out of her majesty's breasts, and observed the bigness of her majesty's belly, which could not be counterfeit. That the deponent came from Whitehall to the queen's labour to St. James's, the tenth of June last, and remained in the room till the queen was delivered, and afterwards, but did not follow the child till some time after, when she the deponent went to see what coloured eyes he had.

ELIZABETH BROMLEY.

Mrs. *Pelegrina Turini*, one of the Gentlewomen of the Bedchamber to the Queen, deposeth,

That she constantly attended the queen when she was last with child, and that on the 10th of June last, she was in waiting on her majesty, who called her on the said 10th of June in the morning, and told her, the deponent, she was in pain, and bid her send for the midwife, her ladies and servants, after which she, the deponent, staid with the queen during her labour, and until she was delivered of the prince of Wales.

The mark of

PELEGRINA  TURINI.

Mrs. *Anna Cary*, one of the Gentlewomen of the Bedchamber to the Queen Dowager, deposeth,

That she waited on the Queen Dowager from Somerset-house to St. James's the day the queen was brought to bed, and went into the queen's bed-chamber, where she, this deponent staid till the queen was delivered, and saw the prince as soon as he was born.

ANNA CARY.

Mrs. *Mary Ann Delubadie*, Dry-nurse to the Prince, deposeth,

That she was with the queen all the time her majesty was with child, and drest her every day, and in all the nine months did not miss above six days, and that at several times by reason of sickness. That on Sunday morning, the 10th of June last, she, the deponent, was sent for to the queen who was in labour. That the deponent came presently and was with the queen all the time of her labour, and that kneeling down by the midwife giving her clothes for the queen, the midwife told this deponent that

immediately on the next pain the queen would be delivered, which accordingly she was; that this deponent whispered to the midwife, asking whether it was a girl, she answered, No; whereupon the midwife parted the child and put it into the receiver (that the deponent had given her) and then delivered the child to the deponent, and bid her go and carry it to the fire, and take care of the navel, which this deponent did, and the king and council followed her, and the king asked this deponent what it was, who answered, what he desired; the king replied, but let me see; whereupon the deponent presently shewed his majesty that it was a son, and the privy counsellors then present saw it one after another; the deponent sat with the prince in her lap till the midwife had done with the queen, then the midwife came and took the prince from this deponent, and asked for a spoon for to give it three drops of the blood of the navel string, which the midwife cut off by the advice of the physicians, who said it was good against fits. That the deponent held the spoon when the midwife dropt the blood into it, and stirred it with a little black cherry water, and then it was given to the prince. That the queen sent for this deponent and gave her the prince to take care of him in quality of dry nurse, which she has hitherto done, and further deposeth it to be the same child that was born of the queen. And that Mrs. Danvers one of the princess of Denmark's women, and formerly nurse to the lady Isabella, coming to see the prince, she told this deponent she was glad to see the same marks upon his eye, as the queen's former children had.

MARY ANN DELABADIE.

Mrs. *Judith Wilks*, deposeth,

That being the queen's midwife, she came often to her, especially when her majesty was in any danger of miscarrying, and many times felt the child stir in her belly, and saw the milk run out of her majesty's breasts; that on Trinity Sunday last in the morning about eight of the clock, the queen sent Mr. White, page of the back-stairs, to call her, this deponent, believing herself in labour, when the deponent came, she found the queen in great pain and trembling: the queen told her, she feared it was her labour, it being near the time of her first reckoning; she, the deponent, desired her majesty not to be afraid, saying, she did not doubt that it was her full time, and hoped her majesty would have as good labour as she always had; and whilst her majesty was sitting trembling, her water broke, and immediately she sent for the king, he being gone to his own side, and let him know in what condition she was, and desired him to send for whom he pleased to be present. The queen ordered this deponent to send for Mrs. Dawson and the rest of her women, Mrs. Dawson came presently, and the countess of Sunderland with her, and the rest of the women also, that most of them saw her, this deponent, make the bed fit for the queen to be delivered in; which when it was ready, her

majesty was put into, and about ten o'clock that morning, the queen was delivered of the prince of Wales, by her, this deponent's assistance, and afterwards she, the deponent, shewed the after-burthen to the physicians, and before them the deponent cut the navel-string, and gave the prince three drops of his blood, to prevent convulsion fits, according to their order. And this deponent further saith, that when the child was born, it not crying, the queen said she thought it was dead, this deponent assured her majesty it was not, and desired leave to part the child from the after-burthen; which the queen was unwilling to have done, thinking it might be dangerous to herself, but the deponent assuring her majesty it would not, her majesty gave consent; whereupon the child presently cried, and then the deponent gave it to Mrs. Labadie. JUDITH WILKS.

Mrs. Elizabeth Pearse, Laundress to the Queen, deposeth,

That about nine of the clock, on the 10th of June last, in the morning, she came into the bed-chamber, and heard the queen cry out, being in great pain, in which she continued until her delivery, after which she, the deponent, saw the prince of Wales given by the midwife to Mrs. Labadie; that immediately after, the deponent saw the midwife hold up the after-burthen, shewing it to the company, and then the deponent fetched her maids, and with them took away all the foul linen, hot as they came from the queen; that for a month after her majesty's lying in, the deponent well knows by the washing of her linen, that the queen was in the same condition that all other women use to be on the like occasion; and that some time after her quickening, it appeared by her smocks that her majesty had milk in her breasts, which continued until she was brought to bed, and afterwards during the usual time.

ELIZABETH PEARSE.

Frances, Duchess of Richmond and Lenox, deposeth,

That she, the deponent, was not at the queen's labour, because she did not know it time enough, but as soon as she did, she made all the haste she could to dress her, but the queen was delivered before she, the deponent came; and that at a time when the queen apprehended she should miscarry, and the physicians made her majesty keep her bed for that reason, the deponent went one evening to wait upon her majesty, and as she stood by her bedside, her majesty said to her, my milk is now very troublesome, it runs out so much. The deponent asked the queen if it used to do so, who answered, it used to run out a little, but now the fright I am in of miscarrying, makes it run out very much as you may see, throwing down the bed clothes to the middle of her stomach, and shewing her smock upon her breast to the said deponent, which was very wet with her milk. F. RICHMOND & LENOX.

Charlotte Countess of Litchfield, deposeth,

That she was not at the queen's labour (being in child-bed herself) but that she was almost constantly with the queen while she was with child, and hath put on her smock, and seen the milk run out of her breast, and felt her belly, so that she is sure she could not be deceived, but that the queen was with child.

C. LITCHFIELD.

Anne, Countess of Marischall, deposeth,

That she was several times in the queen's bedchamber when she shifted herself, and hath seen her smock stained with her milk; that she was not at the queen's labour, though sent to by one of her ladies, being sick of a fever; but does in her conscience believe her majesty was with child, both by her belly and her milk.

A. MARISCHALL.

George, Lord Jeffreys, Lord Chancellor of England, deposeth,

That he being sent for to St. James's on the tenth of June last, by a messenger that left word the queen was in labour, soon after he this deponent came to St. James's, and was sent for into the queen's bedchamber; and to the best of his, the deponent's, apprehension, the queen was in labour, and had a pain or two to the best of the deponent's remembrance before the rest of the lords were called in. The deponent stood all the time at the queen's bedside, and heard her cry out several times as women in travail use to do, and at length after a long pain, it was by some of the women on the other side of the bed said the child was born. The deponent heard the queen say she did not hear it cry. The deponent immediately asked the Lord President what it was, he whispered that it was a boy, which the deponent understood he had hinted to him by the lady Sunderland. Immediately the deponent saw a gentlewoman, who he hath since heard her name to be Mrs. Labadie, carry the child into another room whither the deponent followed, and saw the child when she first opened it, and saw it was black and reaking, so that it plainly seemed to this deponent to have been newly come from the womb. The deponent doth therefore depose, he doth stedfastly believe the queen was delivered of that child that very morning.

JEFFREYS, C.

Robert, Earl of Sunderland, Lord President of his Majesty's Privy Council, and Principal Secretary of State, deposeth,

That on Sunday morning the tenth of June last, he was sent to, to come to St. James's the queen being in labour. The deponent immediately went, and found many Lords of the Council there. After having been some time in an outward room, first the Lord Chancellor, and then the rest of the Council were called into the queen's bed-chamber, where in a short time her majesty was brought to bed. The deponent saw Mrs. Labadie carry the child

into the next room, whither the deponent followed with many more, and saw it was a son, and had the marks of being new born.

SUNDERLAND, P.

Henry, Lord Arundell of Wardour, Lord Privy Seal, deposeth,

That on the tenth of June last, being Sunday, he had notice given him that the queen was in labour; whereupon the deponent repaired to St. James's betwixt nine and ten of the clock in the morning, where he found several Lords of the Council. In a little time after, they were all called into the queen's bed-chamber; in less than a quarter of an hour after, she fell into the sharpness of her labour: her cries were so vehement, and especially the last, that the deponent could not forbid himself the being concerned for her great pain, which the deponent expressing to the Lord Chancellor, he told the deponent it was a sign her majesty would the sooner be delivered, or words to that purpose; which proved very true, for presently after she was so. The deponent heard a whispering up and down that it was a prince, for no man was permitted to speak it aloud, lest the sudden knowledge of it might have discomposed the queen. The deponent did not go in with some Lords when the child was carried into the next room, which was the occasion the deponent did not see him when he was uncovered and drest.

ARUNDELL, C. P. S.

John, Earl of Mulgrave, Lord Chamberlain of his Majesty's Household, saith, it is not to be expected one of his sex should be able to give full evidence in such a matter, but deposeth,

That he was just at the beds' feet, and heard the queen cry very much; then the deponent followed the child into the other room, and it seemed a little black; the deponent also saw it was a boy.

MULGRAVE.

William, Earl of Craven, deposeth,

That he attending the king at St. James's the tenth of June last, in the morning, to receive the word of his majesty, the king had notice brought him that the queen was upon the point of falling into labour; upon which the king commanded this deponent's stay and attendance; and after the space of one hour and something more, this deponent was, with some other Lords of his majesty's privy council, called into the queen's great bedchamber to be present at her delivery; and as near as this deponent can remember, the queen made three groans or squeaks, and at the last of three was delivered of a child, the which was carried out into the little bedchamber, and there by the fire this deponent saw it cleansing: and this deponent further saith, that he took that particular mark of this child, that he may safely aver, that the prince of Wales is that very child, that then was so brought out of the queen's great bedchamber, where this deponent

and others were present, as aforesaid, at her majesty's labour and delivery.

CRAVEN.

Lewis, Earl of Feversham, Lord Chamberlain to her Majesty the Queen Dowager, deposeth,

That being in bed upon the tenth of June, between eight and nine a clock in the morning, Mr. Nicholas one of his majesty's grooms of his bed chamber, came into this deponent's room, and told him that the king had sent him to tell the queen Dowager that the queen was in labour, and told him further, that the queen Dowager had given order for her coach, as soon as she heard the news of the queen's labour. The deponent dressed himself with all speed, and came to wait upon the queen Dowager, who was ready to go into her coach, as she did, the deponent went into one of her coaches to wait upon her majesty as he used to do, having the honour to be her lord chamberlain; we went to St. James's, and then led her majesty into the queen's bed chamber, and finding the queen in pain, the deponent went into the next room, where were several lords of the Privy Council, from whence the deponent heard the queen cry out several times, and a very little after the lords of the council were called in, and the deponent followed them into the bed chamber, and a very little after the queen cried louder, and then said, Pray do not tell me what it is yet. The deponent went out of the room to tell the news that the queen was brought to bed; and when the deponent came in again the news was that it was a prince, and immediately the deponent saw Mrs. Labadie with the child wrapt up in her hands, and in the crowd; upon which the deponent desired to make room for the prince, and followed her into the little bed chamber, where the deponent saw the prince as a child newly born, as he believed it.

FEVERSHAM.

Alexander, Earl of Morray, deposeth,

That he came not to St. James's till half an hour after the queen was brought to bed, and only heard that her majesty was brought to bed of a prince, which the deponent verily believes, as he is alive, she brought into the world that very morning being the 10th of June last, 1688.

MORRAY.

Charles Earl of Middleton, one of his Majesty's principal Secretaries of State, deposeth,

That the tenth of June last past, betwixt 8 and 9 of the clock in the morning, he had notice that the queen's majesty was in labour; whereupon the deponent made what haste he could to St. James's; the deponent found the earl of Craven waiting at the queen's bed chamber door towards the drawing room which was then shut; just after the king opened it, and called the earl of Craven and the deponent in; the deponent asked his majesty how the queen was? He was pleased to answer the deponent, you are a married man and so may

know these matters; the water is broke or come away, or to that effect; and then bid the deponent go into the dressing room within the bed chamber where the deponent found several persons of quality; above half an hour after, to the best of this deponent's memory, all the company in that room were called into the bed chamber; the deponent stood near the bed's feet on the left side, where he heard the queen's groans, and presently after several loud shrieks; the last the deponent remembers continued so long that he then wondered how any body could hold their breath so long, presently after, the deponent heard them say, the queen was delivered: Whereupon the deponent stepped up to the bedside, and saw a woman, he supposes the midwife, kneeling at the other side of the bed, who had her hands and arms within the bed clothes for a pretty while, then the deponent saw her spread a cloth upon her lap, and laid the end of it over the bed clothes, and then fetch a child (as the deponent firmly believes, for he could not then see it) out of the bed into that cloth, and give it to Mrs. Labadie, who brought it round to the side where the deponent stood, and carried it into a little room, into which the deponent immediately followed the king, and saw her sit down by the fire, and heard her say, It is a boy, upon which the king said, Let me see it, thereupon she laid open the cloth, and shewed all the child, saying, There's what you wish to see; the deponent doth not charge his memory with the very words, but the sense of what he heard. The deponent looked upon the child at the same time, which appeared to be very foul. This deponent desireth pardon if he doth not know the proper expression, but hopes his meaning is plain.

MIDDLETON.

John Earl of Melfort, deposeth,

That on Sunday the tenth of June last betwixt eight and nine in the morning, the deponent was informed that the queen was in labour. The deponent went to St. James's, and waited in the queen's drawing room till some of the gentlemen told him he might go in; the deponent scratched at the door of the bed chamber, and finding no answer, he ran down by the garden side, and came to the queen's back stairs and finding the dressing room door open, the deponent went into the queen's bed chamber, where he saw a great number of company lords and ladies standing about the bed. The deponent heard the queen cry out in great pain, as women use to do when they are near being brought to bed; the deponent heard her complain, and a woman's voice which the deponent thought to be the midwife telling her, she would be quickly well, she would be brought to bed immediately; within a little the deponent heard the ladies behind the bed say, the queen was brought to bed, and the queen cry out, the child is dead; I do not hear it cry, and immediately the child cried; within a little the deponent saw a woman bring a child from within the bed; the deponent look-

ed so earnestly at the child, that he knew not what woman it was; the child was in the condition of a new born child, lapt up in loose clothes, the deponent saw him carried into the little bed chamber, and went about by the dressing room and entered by the other door into the room where the prince was, and saw him in the condition of a new born child, and the deponent by the oath he hath taken believes him to be the queen's child.

MELFORT.

Sidney Lord Godolphin, Lord Chamberlain to the Queen, deposeth,

That he was called into the queen's bed-chamber, with the rest of the lords of the council, being one of the last; and the queen dowager being there and several ladies, the room was so full, that the deponent could not get near the bed, but stood by the chimney; There the deponent heard the queen cry out several times, as women use to do that are in labour; and the last cry that the deponent heard was much greater than the other, immediately upon that, the deponent was called out of the room to give some directions about the lodgings, that was preparing for the child, which were not ready, the deponent made haste back again, but as he was coming, he met people running with the news that the queen was delivered of a son, whereupon the deponent went into the little bed-chamber and saw the child.

GODOLPHIN.

Sir Stephen Fox, kt. deposeth,

That on Sunday the tenth of June last past, about nine of the clock, as he came out of the chapel at Whitehall after the first sermon, hearing that the queen was in labour, he, the deponent, made haste to St. James's, because in waiting as an officer of the green cloth, to warn the several servants below stairs to be in their offices, that upon that occasion there might not happen to be any thing wanting of household provisions and necessaries under his this deponent's command, but first going up by the back stairs into her majesties dressing room, and being there with many others he heard her majesty cry out very loudly; whereupon this deponent hastened to the green cloth, and ordered the several servants to deliver out of their several offices whatsoever should be called for, and as this deponent was returning back to the queen's said dressing room, he was told a prince was born. Upon which news, he this deponent went into the queen's little bed-chamber, and saw the young child before he was dressed.

STE. FOX.

Lieut. Col. Edward Griffin, deposeth,

That upon Sunday the tenth of June last, he had the honor to be in waiting upon the king with the stick, and between eight and nine in the morning, this deponent was in the queen's dressing room at St. James's with several lords of the council, and after some time we were there, the king came out of the queen's bed-chamber, and called all the lords in, and

this deponent went in along with them, being in waiting; immediately after the said lords and this deponent were in the room, the queen cried out extremely, and said, Oh, I die, you kill me, you kill me, and the midwife (as this deponent believeth) answered, This one pain, Madam, and 'twill be over, then presently Mrs. Dawson made this deponent the sign that the child was born. Then this deponent heard the queen say, Don't tell me what it is yet, and Mrs. Dawson came to this deponent and whispered him in the ear, It is a prince, but do not take notice of it yet; Then Mrs. Delabadie brought away the child from the bedside, and carried it into the little bed-chamber, and the king and the lords of the council went after her, but this deponent did not follow them.

EDWARD GRIFFIN.

Sir Charles Scarburgh, first physician to the king, deposeth,

That upon the deponent's coming to visit her majesty then lying at St. James's on Sunday the 10th of June 1688, as the deponent went up the back-stairs, he heard the joyful acclamation that a prince of Wales was born; upon which the deponent hastened presently into the little bed-chamber, where the deponent found Mrs. Labadie just sitting down before the fire with the new-born prince wrapped in the mantles lying in her lap. Then passing to the queen in the next bed-chamber, the deponent congratulated the happy birth of the prince and her majesty's safe delivery. The queen was wearied and panting, but otherwise in good condition. Then the midwife brought to the deponent the after-birth reeking warm, which sir Thomas Witherley with the deponent examined and found very sound, and perfect. After a while, the deponent understood that a medicine was mentioned among the ladies for a certain remedy against convulsions: It was, some drops of blood from the navel-string, the deponent consulted sir Thomas Witherley and the other physicians, and to satisfy the women it was allowed of, there being as was conceived no danger in the thing. Whereupon the midwife with a small knife slit the navel string beyond the ligature, from which came some drops of fresh blood, taken in a spoon and given the child, being mixed with a little black cherry water. Thus much the deponent hath to say upon her majesty's present delivery.

Now for the time of the queen's conception, she often told the deponent and others that she had two reckonings; one from Tuesday the 6th of September, when the king returned from his progress to the queen then at Bath: and the other, from Thursday the 6th of October, when the queen came to the king at Windsor; but for some reasons the queen rather reckoned from the latter, though afterward it proved just to agree with the former. Moreover, her majesty, when, according to her reckoning, she was gone with child twelve weeks, said, that she was quick, and perceived the child to move, the deponent returned no answer to the

queen; but privately told those about her, that in truth it could not so be in so short a time, yet the queen was in the right, only mistook her reckoning, for she was then full sixteen weeks gone with child; about which time she usually quickened with her former children, and accordingly was brought to bed on the 10th of June, 1688, and within three or four days of full forty weeks. CHARLES SCARBURGH.

Sir Thomas Witherley, second physician to the king, deposeth,

That on Sunday the 10th of June, the deponent was present in the queen's bed chamber when the prince of Wales was born, the deponent saw Mrs. Labadie bring the child from the midwife, and carry him into the next room, whither the deponent followed her, and saw the child before he was cleaned; and having a command from the queen that there should be two drops of the blood of the after-burthen given the first thing; we the said deponent and the other physicians, did take two drops of blood from the navel-string which remained upon the child, and gave it in a spoonful of black cherry water as the queen commanded. After this the deponent saw (as also did the other physicians) the after-burthen entire.

THOMAS WITHERLEY.

Sir William Waldegrave, Knt. her Majesty's first physician, deposeth,

That in the progress of her majesty's being with child, the deponent having the honour to wait upon her as usual upon the 13th of February 1687, [i. e. 1687-8] about ten in the morning, she told the deponent she had milk in her breasts which dropt out, it was then thought the nineteenth week according to one reckoning, but according to another reckoning, it was the one or two and twentieth week, the deponent also affirmeth that her majesty took such astringent medicines during the most part of her being with child, in order to avoid miscarriage, that if she had not been with child, they must have been prejudicial to her health and of dangerous consequence. Upon the 10th of June, 1688, the deponent was called at his lodging in Whitehall to wait upon the queen, being told she was in labour, upon which the deponent immediately went to St. James's and so into the queen's bedchamber and found her beginning her labour, it being eight of the clock in the morning, the deponent stirred not from thence, but to get such medicines as were fit for her majesty, and then returned again, and was in the bed-chamber when she cryed out, and was delivered; the deponent followed Mrs. Delabadie, who took the prince in her arms so soon as he was born and carried him into the little bedchamber, where the deponent saw him upon her lap, and was by when he took two or three drops of the navel string fresh warm blood which was mixed with black cherry water, then returned into the great bed chamber where the deponent saw the after-burthen fresh and warm. W. WALDEGRAVE.

Dr. Robert Brady, one of his majesty's physicians in ordinary, deposeth,

That a little before ten of the clock in the morning on the 10th of June, 1688, the deponent was in the queen's little bed chamber at St. James's, where the deponent saw the prince of Wales in Mrs. Labady's lap by the fire side, the deponent desired to see the linen and blankets opened in which he was wrapped, which being done, the deponent saw it was a male child, and the navel-string hanging down to, or below the virile parts, with a ligature upon it, not far from the body, but did not see any after-burthen hanging at, or joyned to it, not being at the birth; the deponent asked how long he had been born, the standers-by told him, at three quarters of an hour after nine of the clock, the queen was delivered.

ROBERT BRADY.

James St. Amand, their majesties apothecary, deposeth,

That from the beginning of November last, he hath generally every day till the 9th of June, 1688, given by the physicians orders restraining and corroborating medicines to the queen's majesty: That on the 10th of June he was sent for in haste to come to St. James's to her majesty, who, the messenger told him, was in labour; that the deponent then received a note from the physicians for medicines for her majesty, which the deponent was obliged to stay and prepare, and so came not to St. James's till the queen was delivered, the deponent meeting, just as shew as going into the bed-chamber, Mrs. Labadie with the young prince in her arms, the king and several of the lords soon after following into the little bed-chamber, where the deponent saw the child naked before it was cleansed from the impurities of its birth, and also saw the navel-string cut, and some drops of fresh blood received into a spoon, which the deponent mingled with a little black-cherry water, and saw given by the physicians orders to the child; and afterwards going into the great bed-chamber where the queen was delivered he saw the after-burthen, &c. fresh.

JAMES ST. AMAND.

After these Depositions were taken, His Majesty was pleased to acquaint the lords, That the princess Anne of Denmark would have been present, but that she being with child, and having not lately stirred abroad, could not come so far without hazard. Adding further,

And now, my Lords, although I did not question but every person here present was satisfied before in this matter, yet by what you have heard, you will be better able to satisfy others. Besides, if I and the queen could be thought so wicked as to endeavour to impose a child upon the nation, you see how impossible it would have been, neither could I myself be imposed upon, having constantly been with the queen during her being with child, and the

whole time of her labour. And there is none of you but will easily believe me, who have suffered so much for conscience sake, incapable of so great a villainy, to the prejudice of my own children. And I thank God, that those that know me, know well that it is my principle, to do as I would be done by, for that is the Law and the Prophets: and I would rather die a thousand deaths, than do the least wrong to any of my children.

His Majesty farther said:

If any of my lords think it necessary the queen should be sent for, it shall be done.

But their lordships not thinking it necessary, her majesty was not sent for.

It is ordered this day by his Majesty in council, that the several Declarations here before made by his Majesty, and by her Majesty the Queen Dowager, together with the several Depositions here entered, be forthwith enrolled in the court of Chancery, and the Lord Chancellor is ordered to cause the same to be enrolled accordingly.

In pursuance of which order in council the lord chancellor on Saturday the 27th day of October following, in the high court of chancery (many of the nobility and lords of his majesty's most honourable privy council being there present) caused the aforesaid order of council, and declarations of his majesty, and likewise that of her majesty the Queen dowager, to be openly and distinctly read in court, as the same are entered in the words aforesaid in the council book. And the lords and ladies and other persons who made the respective depositions aforesaid, being present in court, were sworn again, and having heard their several depositions distinctly read, in the words aforesaid, and being severally interrogated by the court to the truth thereof, they all upon their oaths affirmed their respective depositions to be true, and did likewise depose (except some few who came in late to the council chamber, or some who stood at too great a distance) that they heard his majesty and her majesty the queen dowager make the several declarations aforesaid, and that the same, as they had been read, were truly entered as they did believe, in the council book, according to the sense, intent and meaning of what his majesty the king, and her majesty the queen dowager did then declare. And for as much as the earl of Huntingdon and the earl of Peterborow, who were able to depose to the matters aforesaid, had not been examined at the council board, but had brought their several depositions in writing which they delivered into court, the said lord chancellor, after the said earls were severally sworn, ordered their depositions to be openly read in these words following:

Upon Trinity Sunday the tenth of June 1688, I went to St. James's house about nine o'clock

in the morning, and followed my lord chancellor, through the lodgings to the dressing room, next to the queen's bed chamber, where divers lords of the council were met upon occasion of the queen's being in labour, the king came several times into the room, and amongst other things was pleased to tell us, that the queen came exactly according to her first reckoning, which was from the king's return from his progress to Bath in September 1687. After this the counsellors were ordered to come into the bed chamber, and I stood on that side of the bed that had the curtains drawn open, I heard her majesty cry out several times. I staid in the room during the birth of the prince of Wales. I saw him carried into the little bed chamber, whither the king, the lords, and myself in particular did follow him.

HUNTINGDON.

I had the honour to be in the king's chamber in the morning, when word was brought him, the queen was not well, and followed him into the dressing room next her majesty's bed chamber, where I staid till his majesty called me to come in, which was about the beginning of her pains. I confess the compassion I had for her majesty, hearing her cries, made my stay there very uneasy, one of the last especially seemed to me so sharp, as it really forced me for a little time to stop my ears with my fingers to avoid hearing more of the like; when setting them at liberty, I heard no more, but perceived a sudden satisfaction in the faces of the assistants, several saying, that the queen was delivered, and soon thereupon I saw the prince brought from about the bed, and carried into the little bed-chamber, whither I went afterwards, to behold him more particularly, where I saw him as a child newly born.

PETERBOROW.

After which the said Earls did severally upon their oaths affirm their depositions to be true, as they had been read, and that they were present in council, and heard his majesty and her majesty the queen dowager make the several declarations aforesaid, and that the same were entered in the council book as they did believe according to the effect true sense and meaning of what their majesties declared in council; whereupon his majesty's attorney general moved the court, that the said declarations of his majesty, and of her majesty the queen dowager, and the several depositions, and the order of council should be enrolled in the petty bag office, and in the office of inrolments in the court of chancery, for the safe preservation and custody of them, which the lord chancellor ordered accordingly.

At the Court at Whitehall the first of November 1688. Present, The King's most excellent Majesty in council.

It is this day ordered by his majesty in council, that these declarations of his majesty and

of her majesty the queen dowager, and depositions, be printed by his majesty's printers, and that none other do presume to print the same.

WILLIAM BRIDGEMAN.

Against the genuineness of this pretended prince of Wales,* it was objected, that the alleged delivery of the queen was fictitious; that the child originally produced as the queen's died on the night of his alleged birth, whereupon another child was substituted, which some weeks afterwards either died or was in extreme danger of death at Richmond, and that then another substitute was introduced; so that, in the phrase of those who maintained this opinion, "the pretended son of James the 2d was really James the 3rd." The grounds of these objections are stated, and their validity is discussed, in the original historians of the period, and in various publications concerning the genuineness of the child. There is also copious allusion to this matter in a work of Mandeville's, printed in the year 1720, under the title of "Free Thoughts on Religion, the Church and National Happiness:" in p. 325 of which, it is said, that "nine in ten of the people living at the time did not believe that the queen had a child."

That the queen was not delivered of any child at the time of the alleged birth of the 'pretended Prince of Wales,' is moreover stoutly asserted and maintained with a plausible but unsatisfactory minuteness of narrative and elaboration of argument in a piece which was published shortly afterwards, under the title of "A Memorial from the English Protestants for their Highnesses the Prince and Princess of Orange."

The following passages relating to the queen's pregnancy occur in the Diary of Henry Earl of Clarendon:

"Jan. 1, 1688. The common report this

* This is the name by which he is generally distinguished in the Statute Book. See 13 W. 3, c. 3. 6 Ann. c. 7. But in some Statutes, (see 1 G. 1, c. 1. 17 G. 2, c. 39) he is styled 'The Pretender,' which is the appellation ordinarily applied in common speech and writing to those who have laid claim to the crown in opposition to the act of settlement (12 and 13 W. 3, c. 2.) Boswell, in his 'Tour to the Hebrides,' gives to the son of the 'Pretended prince of Wales' (which son was in common parlance denominated 'the young Pretender,") the title of 'Prince Charles Edward,' as being, he says, grandson of Sobiesky king of Poland, and so a 'prince by courtesy.'

There is some humour, as well as readiness, in the reply of Dr. Byrom, a sturdy non-juror, who had been much pressed to drink the toast of 'God bless the King:'

God bless the King! God bless our Faith's Defender!
God bless—no harm's in blessing—the Pretender!
But who Pretender is, or who is King,
(God bless us all!) that's quite another thing.

morning was, that the queen was quick. I am sure all honest men wish the increase of the royal family."

"Jan. 15. In the morning I went to St. James's church: this was the thanksgiving day appointed for the queen's being with child. There were not above two or three in the church, who brought the form of prayer with them: it is strange to see, how the queen's great belly is every where ridiculed, as if scarce any body believed it to be true. Good God help us."

"April 16. The queen is very much out of order to day: insomuch that it was feared she would miscarry."

"May 9. In the evening the queen was indisposed; upon which the king was sent for from Clatham," [qu. Chatham.]

"May 10. The queen continued much out of order."

"May 11. The queen was very well, and had a very good night."

"June 10. In the morning I was at St. James's church; where I observed great whispering; but could not learn, what the matter was. As I was going home my page told me, the queen was brought to bed of a son: I sent presently to St. James's, (whither the court removed but the last night) and word was brought me, it was true, that her majesty was delivered about ten this morning. As soon as I dined, I went to court, and found the king shaving. I kissed his hand, and wished him joy. He said, the queen was so quick in her labour, and he had so much company, that he had not time to dress himself till now. He bid me go and see the prince. I went into the room, which had been formerly the duchess's private bed-chamber; and there my lady Powis (who was made governess) shewed me the prince: he was asleep in his cradle, and was a very fine child to look upon."

"June 11. In the morning there was a strong rumour that the young prince was dead: he had been ill in the night, and the king was called up; but upon giving him remedies, God be thanked, he grew better."

"June 17. I was at St. James's church. This was appointed for a day of thanksgiving for the birth of the prince of Wales."

"June 23. Monsieur Zulestein arrived from Holland from the prince of Orange to congratulate the birth of the prince of Wales."

"July 31. I went to Windsor. I waited on the king and queen; who, as soon as they had dined, went to Richmond, the prince not being well: he was settled there for the benefit of the air."

"August 2. The prince was extremely ill, and was thought in great danger: he had been hitherto brought up by hand, and now they spoke of giving him a nurse."

"August 8. I was told the prince had been very ill, till the day before yesterday, when a nurse was given him; and that upon sucking he visibly mended."

"August 11. My wife was at Windsor,

and brought an account that the prince was come thither to day extremely mended."

"Oct. 15. In the afternoon the prince of Wales, (who had been formerly baptized) had his name given him with great solemnity in St. James's chapel; which is, James Francis Edward." *

"Oct. 21. In the afternoon I had a summons to be at council to-morrow at ten o'clock in the morning. The messenger told me, he had orders to summon all the rest of the peers in town; as well those who were not, as those who were privy counsellors. I visited my lord Halifax, in hopes to have learnt the cause of this meeting; but he told me, he had received his summons; but could not imagine, what it was for. We agreed to communicate to each other what we heard; and, I said, I would call upon him to-morrow morning, as I went to court. I waited on the princess, hoping to learn there the occasion of this extraordinary summons. She told me, she knew not certainly, why it was; but she believed, it was for something relating to the prince of Wales. She had much company: so I could get but two words with her."

"Oct. 22. In the morning I went to lord Halifax; where I found lord Burlington and lord Weymouth: quickly after came in my lord Nottingham. They all seemed to wonder at this extraordinary summons. I told them, what I heard was the cause of it, without naming my author: lord Nottingham said, he had heard the same. I said, I was in some difficulty, what to do: I was unwilling to displease the king, by not being there; and yet I had resolved not to sit in council with father Peters.† Lord Nottingham was of the same mind; and after some little further discourse he and I went to Whitehall together. We

* "It was another unpopular thing," says Kennett (*Complete History*, vol. 3, p. 522, 2d edit.) "to baptize the prince of Wales into the Roman Communion, and make the Pope his godfather, as if it were done with a designed insult upon the Protestant religion; and to give this public account of it: 'Whitehall, October 15. This day, in the chapel of St. James's, his royal highness the prince of Wales, being before christened, was solemnly named (amidst the ceremonies and rites of baptism) James Francis Edward. His holiness, represented by his nuncio, godfather, and the queen dowager godmother. The king and queen assisted at the solemnity, with a great attendance of nobility and gentry, and concourse of people, all expressing their joy and satisfaction, which was suitable to the place and occasion.'"

† This man, who is sometimes called Petre and sometimes Peters, was of the family of the lord Petre. He was Confessor to James the Second, and in very great favour with him; the king had made him a privy counsellor, and, as it appears, designed for him the archbishopric of York: he seems to have been the principal

found the king almost dressed: I told him, my lord Nottingham and I desired to speak with his majesty. He presently took us into the room within his bed-chamber: I begun, and said, we had received a summons to attend him this morning; that, I perceived, it was upon some extraordinary business, by all the peers, who were in town, being summoned likewise; that, I hoped, his majesty would not be offended with me, if I humbly begged, he would give me leave to be there as a peer, and not as a counsellor. The king seemed a little uneasy, and asked my reason. I told him, I should be always ready to serve him; but I humbly begged his pardon in saying, that I could not sit at council with father Peters. Lord Nottingham spake more largely to the same effect. The king said, We should see father Peters no more at council. Lord Nottingham asked, if he was put out of the council? The king replied, No; but he had sent him an intimation not to come thither; and he should be there no more. Then lord Nottingham said, there were others at that board, who were not qualified to sit there; and that he could not join in council with them: at which the king seemed a little angry, and bid us go as we would. He said, the hour drew near; and so he went away. We went into the council chamber, and sate among the lords, and not at the board; as did the archbishop of Canterbury. The queen dowager was there, and, I think, all the bishops in town; as likewise my lord mayor and aldermen, all the judges, and the king's learned council. The king said, the princess would have been there; but being with child, and having been subject to miscarry, it was not safe for her to go out of the chamber. The king made a short speech, to acquaint the lords with the occasion of the meeting; which was, to take several depositions upon oath relating to the birth of the prince of Wales; all which, with what his majesty said, are in the council books.

"Oct. 23. In the morning I waited on the princess. She presently fell to talk of the examinations taken yesterday, and told me, I had heard a great deal of fine discourse at council; and made herself very merry with that whole affair. She was dressing, and all her women about her; many of whom put in their jests. I was amazed at this behaviour, and

adviser of king James in his furious measures concerning religion.

In the 5th volume of the Harleian Miscellany is printed an article of coarse and vulgar abuse against Petre, entitled, "The last Will and Testament of Father Peters; as it was found quilted into my Lord Chancellor's Cap: with a Letter addressed to his Lordship, &c. and his Prayer to the Blessed Virgin of Loretto;" to which, I observe, is annexed as a Note in the edition of 1810, p. 329, a short biographical account of Hugh Peters the fanatic, who was executed as a regicide in the year 1660. See his Case, vol. 5, p. 1116, of this Collection.

thought not fit to say any thing at present; but I whispered to her royal highness, that she would give me leave to speak with her in private. She said, it grew late, and she must make haste to be ready for prayers; but I might come at any time to her, except this afternoon: so I went home. In the evening my brother was with me: I told him all this concerning the princess, and wished, he would go and talk with her; but he said, it would signify nothing."

"Oct. 31. In the afternoon I waited upon the princess: she was in her closet: but quickly came out to me. She said, she was sorry, she had disappointed me so often, when I desired to speak with her; and asked me now, what I had to say? I told her, that I was extremely surprised and troubled the other day, to find her royal highness speak so slightly of the prince of Wales's affairs, and to suffer her women to make their jests upon it: she replied, surely I could not but hear the common rumours concerning him. I said, that I did hear very strange rumours indeed, as every one must do, who lived any thing publicly in the world; but that to me there seemed no colour for them. The princess then said, she would not say, she believed them; but, she must needs say, the queen's behaviour during her being with child was very odd, especially considering the reports that went abroad: is it not strange, said she, that the queen should never (as often as I am with her, mornings and evenings) speak to me to feel her belly? I asked, if the queen had at other times of her being with child bid her do it? She answered, No; that is true. Why then, madam, said I, should you wonder, she did not bid you do it this time? Because, said she, of the reports. Possibly, said I, she did not mind the reports. I am sure, said she, the king knew of them; for, as he has been sitting by me in my own chamber, he would speak of the idle stories that were given out, of the queen's not being with child, laughing at them. Therefore, said she, I cannot but wonder, there was no more care taken to satisfy the world. I asked her, if her royal highness had upon those occasions said any thing to the king? She answered, no. I replied, that the king might very well think, she minded the reports no more than he did, since she said nothing to him, even when he gave her opportunities; that in my humble opinion, if she had the least dissatisfaction, she ought to have discovered it for the public good, as well as for her own and her sister's sake. She replied, if she had said any thing to the king, he would have been angry; and then God knows, what might have happened. I answered, that, if she had no mind to have spoken to the king herself, she had friends, who would have endeavoured to serve her, and would have managed it without any prejudice to her: that this was the first time she had said any thing to me, though I had sometimes given her occasion to open her mind, by putting her upon speaking to the king, since these

alarms of an invasion. I begged her to consider, what miseries these suppositions might entail upon the kingdom, even in case God should bless the king with more sons: I therefore humbly besought her to consider, and do something, that the world might see, her royal highness was satisfied. To all this she made no answer; but, as I went away, she desired I would see her often. Strange!"

"Nov. 1. To day at council the king directed the whole privy council to attend the princess of Denmark, with copies of the depositions concerning the birth of the prince of Wales, and of what his majesty said in council upon that occasion. In the evening, after the council was up, all the lords accordingly waited on the princess with the said depositions, and declarations of his majesty, and the queen dowager. Upon receiving them from their lordships, the princess answered to this effect: 'My lords, this was not necessary; for I have 'so much duty for the king, that his word 'must be more to me than these depositions.' I was in the next room; and, when the lords came out, I went in. The princess was pleased to tell me the answer she gave, as above; upon which I said, I hoped there remained no suspicion with her royal highness. She made no answer, there being company in the chamber."

I have not observed in Clarendon's Diary, any later mention of this matter, except his notice that on Dec. 5, Burnet asserted to him that the child was supposititious, and that on Dec. 24th, when he moved the Lords, that they "might inquire into the birth of the prince of Wales," lord Wharton replied to this effect: "My Lords, I did not expect at this time of day to hear any body mention that child who was called the prince of Wales. Indeed I did not; and I hope we shall hear no more of him."

In Dalrymple's Memoirs, Appendix, part 1, are printed several Letters from king James to the prince of Orange, in one of which, dated May 11, 1688, he tells him, "The queen had not been well, and was in some fears of coming before her time, but God be thanked, she was very well all day yesterday, and continues so now, so that I hope she will go out her full time." And in another dated June 12, he says, "The queen was, God be thanked, safely delivered of a son, on Sunday morning, a little before ten; she has been very well ever since, but the child was somewhat ill this last night of the wind and some gripes, but is now, blessed be God, very well again, and like to have no returns of it, and is a very strong boy." Dalrymple also publishes in the same Appendix, some "curious Notes from the princess Anne's Letters to her sister, which were taken from the originals by the late Doctor Birch," and which he says the earl of Hardwicke was so obliging as to give him. Among them are the following:

"The Cockpit, March 14, 1687-8.

"I cannot help thinking Mansell's wife's

(i. e. the queen) great belly is a little suspicious. It is true indeed, she is very big, but she looks better than ever she did, which is not usual; for people when they are so far gone, for the most part, look very ill: besides, it is very odd, that the bath, that all the best doctors thought would do her a great deal of harm, should have had so very good effect so soon, as that she should prove with child from the first minute she and Mansell met, after her coming from thence. Her being so positive it will be a son, and the principles of that religion being such, that they will stick at nothing, be it never so wicked, if it will promote their interest, give some cause to fear there may be foul play intended. I will do all I can to find it out, if it be so; and if I should make any discovery, you shall be sure to have an account of it."

"The Cockpit, March 20, 1687-8,

"I hope you will instruct Bentley, what you would have your friends to do, if any alteration should come, as it is to be feared there will, especially if Mansell has a son, which I conclude he will, there being so much reason to believe it is a false belly. For methinks, if it were not, there having been so many stories and jests made about it, she should, to convince the world, make either me, or some of my friends feel her belly; but quite contrary, whenever one talks of her being with child, she looks as if she were afraid one should touch her. And whenever I have happened to be in the room, as she has been undressing, she has always gone in the next room, to put on her smock. These things give me so much just cause of suspicion, that I believe, when she is brought to bed, nobody will be convinced it is her child, except it prove a daughter. For my part, I declare I shall not, except I see the child and she parted."

"The Cockpit, June 18, 1688.

"My dear sister cannot imagine the concern and vexation I have been in, that I should be so unfortunate to be out of town when the queen was brought to bed, for I shall never now be satisfied, whether the child be true or false. It may be it is our brother, but God only knows, for she never took care to satisfy the world, or give people any demonstration of it. It is wonderful, if she had really been with child, that nobody was suffered to feel it stir, but Madam Mazarin, and lady Sunderland, who are people that nobody will give credit to. If out of her pride, she would not have let me touch her, methinks it would have been very natural for her sometimes, when she has been undressing, to have let Mrs. Roberts, as it were by chance have seen her belly; but instead of endeavouring to give one any satisfaction, she has always been very shy both to her and me. The great bustle that was made about her lying in at Windsor, and then resolving all of a sudden to go to St. James's, which is much the properest place to act such a cheat in; and Mr. Turone's lying in the bedchamber that night she fell in labour, and none of the family besides being re-

moved from Whitehall, are things, that give one great cause to be suspicious. But that, which to me seems the plainest thing in the world, is, her being brought to bed two days after she heard of my coming to town, and saying that the child was come at the full time, when every body knows, by her own reckoning, that she should have gone a month longer. After all this, it is possible it may be her child; but where one believes it, a thousand do not. For my part, except they do give very plain demonstrations, which is almost impossible now, I shall ever be of the number of unbelievers. I don't find that people are at all disheartened, but seem all of a mind, which is a very comfortable thing at such a time as this."

"*The Cockpit, July 9, 1688.*

"The prince of Wales has been ill these three or four days; and if he has been so bad as some people say, I believe it will not be long before he is an angel in heaven."

"*Questions sent by the Princess of Orange, to the Princess Anne of Denmark.*

"*July 21, 1688.*

"1. Whether the queen desired at any time any of the ladies, in particular the princess of Denmark, to feel her belly, since she thought herself quick; and who those ladies are; and when that was, whether in the beginning of her being quick, or of late?

"2. Whether the milk that, as is said, was in the queen's breasts, was seen by many, or conducted in a mystery?

"3. Whether the astringents, that the queen is said to have taken, were taken by her openly, or if a mystery was made of that?

"4. Whether the treating of the queen's breasts for drawing back the milk, and the giving her clean linen, has been managed openly, or mysteriously?

"5. At what hour did the queen's labour begin?

"6. At what hour was the notice of it sent to the king? Whether the king did not lie at St. James's, or with the queen that night; or if he was gone back to Whitehall?

"7. Whether upon sending to the king, the thing was let fly over St. James's and Whitehall; or if the notice was sent secretly to the king?

"8. Whether did the king send about for the privy counsellors; or if he took those that were by accident at Whitehall?

"9. At what time came the king with the council into the queen's chamber?

"10. Whether was there a screen at the foot of the bed, between it and the rest of the room or not?

"11. Whether did any women, besides the confidants, see the queen's face when she was in labour? And whether she had the looks of a woman in labour? Who was in the room, both men and women? What time they came in, and how near they stood?

"12. How long was the king talking to the

privy counsellors, after the child was carried into the next room, before he went to look upon it? and in this, as well as in the other questions, relating to the point of time, a critical answer, as near to a minute as it is possible, is desired.

"13. What women, of one sort or other, were present? And if no woman was called in to hold the queen?

"14. Were no ladies sent for? or who were sent for? and at what time the message was sent to the queen dowager? Also at what time she came?

"15. Whether in any former labour the queen was delivered so mysteriously, so suddenly, and so few being called for?

"16. If many observed the child's limbs being slender at first, and their appearing all of a sudden to be round and full?

"17. Is the queen fond of it?

"18. How Mrs. Dawson, Mrs. Bromley stands with the queen? Which of her bed-chamber women are most in favour?

"Ad. 12. Who took the child, when it was born?

"Ad. 13. If the king did not use to be nearer the bed, and hold the queen in former labours?

"Ad. 16. If every body is permitted to see the child at all hours, dressed and undressed?

"Ad. 16. Who is about it, rockers and dry nurse?

"Ad. 3. What doctors were consulted about the queen, before, and since her being at the bath. Whether Doctor Waldgrave alone, or others with him, knew the particulars of her condition, all along."

"*The Princess Anne of Denmark's Answer.*

"*The Cockpit, July 24, 1688.*

"I received yesterday, yours of the 19th, by which I find you are not satisfied with the account I have given you in my last letter; but I hope you will forgive my being no more particular, when you consider, that not being upon the place, all I could know, must be from others; and having then been but a few days in town, I had not time to enquire so narrowly into things, as I have since; but before I say any more, I can't help telling you, I am very sorry you should think I would be negligent in letting you know things of any consequence. For though I am generally lazy; and it is true indeed, when I write by the post, for the most part, I make those letters very short, not daring to tell you any news by it; and being very ill at invention, yet I hope you will forgive my being lazy, when I write such letters, since I have never missed any opportunity of giving you all the intelligence I am able; and pray be not so unjust to believe I can think the doing any thing you can desire, any trouble; for certainly I would do a great deal more for you, if it lay in my power, than the answering your questions, which I shall do now as exactly as you desire.

"1. I never heard any body say they felt

the child stir; but I am told lady Sunderland, and Madam Mazarin say they felt it at the beginning. Mrs. Dawson tells me she has seen it stir, but never felt it.

"2. I never saw any milk; but Mrs. Dawson says she has seen it upon her smock, and that it began to run at the same time it used to do of her other children.

"3. For what they call restringing draughts, I saw her drink two of them; and I do not doubt but she drank them frequently and publicly before her going to the bath. Dr. Waldgrave was very earnest with sir Charles Scarborough, to be for her going thither; but he was so fierce against it, that there was another consultation of doctors called, sir Charles Scarborough, Dr. Waldgrave, Wetherby, Brady, and Brown. After that, there was only sir Charles Scarborough and Dr. Waldgrave (and for the first I believe he knew but little), excepting once, when she was to be let blood, and when she was to have gone to Windsor. Then some of the others were called in to give their opinions.

"4. All I can say in this article is, that once in discourse, Mrs. Bromley told Mrs. Roberts, one day Rogers's daughter came into the room, when Mrs. Mansell was putting off her clouts, and she was very angry at it, because she did not care to be seen when she was shifting.

"5. She fell in labour about eight o'clock.

"6. She sent for the king at that time, who had been up a quarter of an hour, having lain with her that night, and was then dressing.

"7. As soon as the king came, he sent for the queen dowager, and all the council. After that, it was known all over St. James's.

"8. Most of the other men, I suppose, that were there, was at the king's rising.

"9. They came into the room presently after the queen dowager came, which is about half an hour before she was brought to bed.

"10. There was no screen. She was brought to bed in the bed she lay in all night, and in the great bed chamber, as she was of her last child.

"11. The feet curtains of the bed were drawn, and the two sides were open. When she was in great pain, the king called in haste for my lord chancellor, who came up to the bed-side to shew he was there; upon which the rest of the privy counsellors did the same thing. Then the queen desired the king to hide her face with his head and periwig, which he did, for she said she could not be brought to bed and have so many men look on her; for all the council stood close at the bed's feet, and lord chancellor upon the step.

"12. As soon as the child was born, the midwife cut the navel-string, because the afterburthen did not follow quickly; and then she gave it to Mrs. Labadie, who, as she was going by the bed-side, cross the step, to carry it into the little bed-chamber, the king stopped her, and said to the privy counsellors, that they were witnesses there was a child born, and bid them follow it into the next room and see what it was, which they all did; for till after they

came out again, it was not declared what it was; but the midwife had only given a sign that it was a son, which is what had been done before.

"13. When the queen dowager first came into the room she went up to the bed-side, but after that stood all the while by the clock. There was in the room lord chancellor, lord president, lord privy seal, the two chamberlains, lord Middleton, lord Cran—, lord Huntingdon, lord Powis, lord Dover, lord Peterborough, lord Melfort, lord Dartmouth, sir John Ernley, lord Preston, sir Nicholas Butler, duke of Beaufort, lord Berkeley, lord Murray, lord Castlemain; these were of the council: and for others, there was lord Feversham, lord Arran, sir St. Fox, and Mr. Griffin, besides pages of the back-stairs and priests. The women that were there were, lady Peterborough, lady Bellasis, lady Arran, lady Tyrconnel, lady Roscommon, lady S. Buckley, lady Fingal, madam Mazarin, madam Bouillon, lady Powis, lady Strickland, lady C—, Mrs. Cran, two of the queen dowager's Portuguesees, Mrs. Bromley, Mrs. Dawson, Mrs. Waldgrave, lady Wentworth, and Mrs. Feraine. All these stood as near as they could. Lady Bellasis gave the midwife the receiver, and Mrs. Dawson stood behind a Dutch chair that the midwife sat upon to do her work. All the time the child was parted, I do not hear of any body that held the queen except the king, and he was upon the bed by her all the while.

"14. I do not hear that any ladies were sent for but the queen's own, and they were called presently after the queen dowager. She came a quarter after nine: where she stood, and at what time she was sent for, I have already told you.

"15. Her labour never used to be so long.

"16. I never heard what you say of the child's limbs. As for seeing it drest or undrest, they avoid it as much as they can. By all I have seen and heard, sometimes they refuse almost every body to see it; that is, when they say it is not well; and methinks there is always a mystery in it, for one does not know whether it be really sick, and they fear one should know it, or whether it is well, and they would have one think it is sick, as the other children used to be. In short, it is not very clear any thing they do; and for the servants, from the highest to the lowest they are all Papists.

"17. The queen forbid lady Powis to bring the child to her before any company; but that, they say, she used to do to her other children. I dined there the other day, when it was said it had been very ill of a looseness, and it really looked so; yet when she came from prayers she went to dinner without seeing it, and after that played at comet, and did not go to it till she was put out of the pool.

"18. I believe none of the bed-chamber women have any credit with the queen but Mrs. Tureine; but they say Mrs. Bromley has an interest with the king.

"I am going to Tunbridge; but if I was to

stay here I could not watch the child, for it is to be at Richmond. Lady Churchill does not go with me at first, and as long as she stays here, I am sure she will do all in her power to give you and I an account if any thing happens that is worth knowing.

"I have done my endeavour to inform myself of every thing; for I have spoke with Mrs. Dawson, and asked her all the questions I could think of: for not being in the room when the queen was brought to bed, one must enquire of somebody that was there; and I thought she could tell me as much as any body, and would be less likely to speak of it; and I took all the care I could, when I spoke to her, to do it in such a manner that I might know every thing; and in case she should betray me, that the king and queen might not be angry with me.

"It was she that told me what I have said in the 5, 6, 7, 9, 12, 13, 14, and 15th articles. She told me, besides, that when she came to the queen, she found Mrs. Tureine and the midwife with her. All that she says seems very clear; but one does not know what to think; for methinks it is wonderful, if it is no cheat, that they never took pains to convince me of it.

"I hope I have answered your letter as fully as you desire; if there be any thing else you would know, pray tell me by the first safe hand, and you shall always find me very diligent in obeying you, and shewing by my actions how real and sincere my kindness is.

"One thing I had forgot, which is, that the last time she was brought to bed, the reason of her being delivered in the great bed was because she was catched; and this time, Mrs. Dawson says, though the pallet was up, the queen would not go into it because the quilts were not aired."

In the same Appendix Dalrymple says:

"The ingenious and learned Mr. Duan was so obliging as to communicate to me the following letter, in his possession, from Dr. Chamberlayne to the Electress Sophia, concerning the birth of the Pretender.

Dr. Hugh Chamberlayne to the Electress Sophia.—Account of the Pretender's birth.

"May it please your royal highness;

"I should not have presumed to interrupt your better spent hours with my rude and unpolished lines, had I not been encouraged by your gracious commands, sent by the rev. Heer Meuschen, minister of the gospel to the Lutheran church in the Hague. He was pleased to give me a short account of a discourse past in your royal highness's presence, wherein my name was mentioned upon two different subjects, of which I think it my duty to give your royal highness the best satisfaction I can. The first related to my attendance at the birth of the Pretender to the crown of Great Britain, now firmly settled by law on your royal highness. In this I perceive the

Heer Meuschen was misled, confounding my discourse with him, on this matter, together with the conversation he might have had with others, occasioned by pamphlets, then here current, pretending an account how far I had been therein engaged, to which several falsehoods were added; one of those papers was writ by Mr. Burnet, son to the bishop of Salisbury. The matter of fact follows:

"On Sunday morning, the day of the month and year occurs not at present to my memory, the queen sent early a footman to fetch me to St. James's; but late the night before being gone to Chatham to visit a patient, he missed me; a post was immediately dispatched, and I hastened and found a child newly born, loose and undrest in lady Powis her lap, and, as I was informed, brought forth an hour before I came. I was not long in the chamber when came the late duke Hamilton, then lord Arran; more, as to this particular, I cannot offer on my own knowledge, but shall subjoin a few probable circumstances; for instance, the dutchess of Monmouth having some time before sent for me, and being in the mean time gone to the queen's levee, left order I should wait her grace's return; when arrived, she was pleased to make this excuse for my waiting; that she had been with her majesty, saw her shifted and her belly very big, which I suppose nothing can so soon reduce as the bearing a child; other tumours requiring for a complete abatement, weeks, months, or years. This relation being wholly occasioned by a chance, and mentioned by one at that time disoblged by the court, I take to be genuine, without artifice or disguise, so that I never since questioned it. Another circumstance in this case is, that my being a noted whig, and signally opprest by king James, they would never have hazarded such a secret as a supposititious child, which, had I been at home to have immediately followed the summons, I must have come time enough to have discovered, though the queen had usually very quick labours. Next morning meeting the king coming through the Park to St. James's, he was pleased to tell me that when he sent I was absent: to which I humbly replied, more warning had been necessary: but he told me they were surprised, for the queen expected to go a fortnight longer: whereupon I answered, that if his majesty had given me three or four months warning as formerly, I would not have left the town without their majesties knowledge and leave. The king told me further, that Dr. Brady, one of his physicians, and phisic professor in Cambridge, had informed him no woman exceeded eight and thirty weeks with child: to which, with a modest smile, I replied, it might be true, though I could not guess how he, I, or another, could know it to be so without having been guardians to a seraglio. I confess I was a little piqued, that besides former slights, neither the king nor queen themselves had spoke to me to attend: indeed, lady Sophia Buckley told me, in her

majesty's presence, some weeks before, that shortly there would be occasion for me; but I did not take that for sufficient orders. At another time lady Jefferies asking whether I had commands to attend her majesty? I briskly answered, I thought I should, unless their brains were in disorder. A third material circumstance may be admitted; that during my attendance on the child, by his majesty's directions, I had frequent discourse with the necessary woman, who being in mighty dread of Popery, and confiding in my reputed whiggism, would often complain of the busy pragmatism of the Jesuits, who placed and displaced whom they pleased, and for her part she expected a speedy remove, for the Jesuits would endure none but their own party: such was our common entertainment; but about a fortnight after the child was born, a rumour being spread through the city that the child was supposititious, she cried, alas! will they not let the poor infant alone? I am certain no such thing as the bringing a strange child in a warming-pan could be practised without my seeing it, attending constantly in and about all the avenues of the chamber.

"Other remoter accidents might be alledged, which being of smaller moment, are forborne; but neither the laws nor practice of England allow other hereditary right to the crown, or private estates, than what upon good grounds, the nation hath power to alter, and often do."

Upon which Dalrymple thus proceeds:

"To defend the Revolution upon a pretended supposititious birth, is to affront it; it stands upon a much nobler foundation, the rights of human nature. The supposititious birth was a mere lie of party, and was intended to have been made use of six years before, if king James's queen had then been brought to bed of a son.

"In the *Observer*, No. 194, printed Wednesday, August 23d, 1682, is the following remarkable passage:

"If it had pleased God to give his royal highness the blessing of a son, as it proved a daughter, you were prepared to make a Perkin of him. To what end did you take so much pains else, by your instruments and intelligences, to hammer it into the people's heads that the dutchess of York was not with child? And so, in case of a son, to represent him as an impostor; whereas you have now taken off the mask in confessing the daughter.—I would have the impression of this cheat sink so far into the heads and hearts of all honest men, as never to be defaced, or forgotten. For we must expect, that the same flam shall, at any time hereafter, be trumped up again upon the like occasion."

He also publishes a letter from the earl of Devonshire to the prince of Orange, dated the 13th of March, O. S. in which is the following passage: "The king declares always his intentions to assemble a parliament, although

matters do not seem disposed for it, they believe it will be about the time of the queen's being brought to bed. The Roman Catholics incline absolutely that it should be a son."

And a letter dated March 27, 1688, from lord Danby to the prince of Orange, begins thus:

"*London, March 27, 1688.*

"Many of our ladies say, that the queen's great belly seems to grow faster than they observed their own to do; and because it is fit her majesty should always have the greatest persons near her in this condition, I hope the princess will take care that the princess Anne may be always within call; and especially to see (when the time is near) that the midwife discharges her duty with that care which ought to be had in a case of so great concern."

The following passage is extracted from the *Englishman*, N^o 5, published October 15, 1713:

"The enemies of the constitution assume every day a new audaciousness, and leave no arts unpractised to undermine it. There is a printed paper given into the hands of passengers gratis, intituled, 'Seasonable Enquiries relating to the birth and birthright of a certain Person.' By the 'Certain Person' is intended the Pretender to her majesty's dominions; and the word 'Seasonable' implies, That the author supposes it is now the proper time to give out insinuations to his advantage. The Fifth Query runs thus:

"Is the birth of a child, owned by both parents to be doubted of, which was never disproved by the next heir who called it in question: and who declared to the world, that he would refer the examination of it to certain judges when assembled, but never did refer it, nor propose it to them, as he declared he would, though the assembly were of his own party, and several times called upon, and challenged by the child's father, to enquire into the birth: Nay, though the said next heir were got into possession of that station, which the child's father did claim while he lived for himself, and for his child upon his demise; and though the said next heir was thus bound in honour and conscience, had power as well as will and opportunity as well as interest, to have disproved it if he could have done it?"

Steele enters not into the question of the Pretender's genuineness, but contents himself with asserting the lawfulness of his exclusion "not only from what estate his parents, whoever they were, might have had among us, but also from the birthright and freedom of an Englishman:" and with maintaining "that by all laws divine and human he is an utter stranger to us, but as he is an enemy." The words "who declared to the world that he would refer the examination of it to certain judges when assembled," &c. alludes to a passage in the prince of Orange's declaration, dated Oct. 10, 1688, in which he said that he

would refer to the parliament the enquiry into the birth of the pretended prince of Wales and of all things relating to it.

In the Supplement to the second volume of the *Collectanea Curiosa*, there is, No. 7, a curious letter from Lloyd bishop of St. Asaph, to Mr. Dodwell, relating to matters of fact at the end of king James the Second's reign, in which is the following passage:

"For the matter of the pretended prince of Wales; when the prince of Orange was come, king James gathered all the witnesses he could to prove the child was born of the queen's body. There was one positive witness for that; but she was a Popish midwife, that never was at any of the queen's childbirths before; all those that served her before in that office were kept away, or not sent for; only this woman being a stranger, and one of no consideration, was brought thither for this purpose, first to take the child out at the pretended delivery, and now at the taking of the depositions to swear she had it out of the queen's body. All the other witnesses swore no other things but what might be as true if the child was supposititious, as if it were the queen's natural child: only there must be a great many mock shews of the things which they swore that they saw; but no doubt there would be such to give credit to a supposititious child. In short, taking all the depositions together, I do not believe a jury of gentlemen would have given an inheritance of 1,000*l.* a year from the next undoubted heir to a child, whose birth had been doubted of, and proved no otherwise than by these depositions. But of a crown there must be an undoubted heir; he that is not that is no heir; or else God deliver us from being an hereditary kingdom: a doubtful heir is a seed of war to all generations.

"But between you and me I could tell you enough to put this matter out of doubt; I could tell you enough to satisfy you that the queen had no child birth, when this child was brought into the world: all was but mere fraud and delusion.

"But you say, why was there not so much as one cross examination, either to weaken their proofs, or to prove the contrary? The answer is plain from what I have written. There was but one witness that knew any thing, and care was taken she should not be cross-examined; for before king James went, she was sent over into France, and the queen went likewise for fear of being asked any questions. The king for his own part seemed to have an apprehension that he might be asked questions himself. I know not where unto else to ascribe it, that he who heretofore wanted not courage, as he shewed upon many occasions, yet since this has been cowardly to a proverb. You have no doubt heard what haste he made in Ireland from the Boin to Waterford in some 24 hours, and from thence over into France.

"You ask, why that matter was not brought before the parliament? The reason is plain in the act of succession. The present king does not pretend to an hereditary right. He had the right of a conquest over king James, which being confirmed by consent of the nation, the same that they consent to the making of their laws, this gives him a lawful right to the monarchy. I say it in the words of Dudley Diggs in his book that was printed at Oxford in defence of Charles 1, against his rebels. Be pleased to read p. 58, 59, of my pamphlet; you will see the same said more at large. I say this to the king was a sufficient title, and the queen and princess Anne had their rights settled by the act of succession.

"They were all satisfied with this: of the people some will never be satisfied: others are as well as they care to be. To either of these sorts of people the examination would be useless. To the rest it might probably do more harm than good. To prove the affirmative of this child's birth, the depositions before mentioned shew that it is impossible. To prove the negative is never required in any court. It is enough if there be no proof of the affirmative: but for this there might be such colours as would disturb the minds of weak people. Put [the] case two or three witnesses bribed with French money should come in and swear as they that hired them should direct; the doubts that might be raised in peoples heads by their perjuries might embroil us and our posterity more than you or I are able to imagine.

"But why did the prince of Orange pretend that this should be examined in parliament? Pray when or where did he pretend it? Never but in his declaration. There indeed he did insist upon this to have the witnesses examined, and that frightened them away. The queen and her midwife are gone. Did the prince of Orange ever pretend to examine any other witness, or did he pretend to examine any witness since they are gone? I ask it because of your words concerning Mr. Ashton," [See his Case, A. D. 1690, in this Collection.] "who, you say, was cut off for providing farther evidence. My dear friend, consider the account that you are to give to God for your words as well as actions. You affirm an accusation of the worst sort of murder against them to whom you owe truth, if no other duty. And this is untrue to my certain knowledge; not to refer you to his trial, against which you have no objection that I know. I must tell you that Mr. Ashton sent for me two days before he died. I was with him some hours, morning and evening, and I think he told me his heart. He said he was going into France for money that the queen owed him, and those letters of treasonable matters were thrust upon him by his friends. He knew not what was in them, but if he might have his life he would be a faithful subject to their majesties. But not a word of the child. I could tell you much more, but I am tired, and the post is going."

In what Macpherson calls *The Life of James the Second*, written by himself, (see vol. 6, pp. 297, et seq.) it is said, under date October 1688, "On the 15th, the prince of Wales was named. His birth was proved in a council extraordinary on the 22nd. The princess Anne waved being at it, pretending danger in coming abroad, being with child." To which passage Macpherson has printed as a Note, the following letter from Tanner's Collection, Oxon, which is also printed with slight variations, from Macpherson's Report in the *Collectanea Curiosa*.

"*The Bishop of St. Asaph to the Archbishop of Canterbury, October 26, 1688.*

"My most honoured Lord;

"I was told, the last night, as a secret, that his majesty intends to send for all the lords that were present at the examination of witnesses, concerning the prince's birth; and to require them to subsign the examinations. This is agreeable enough with that which is printed in the Gazette, viz. That a full and particular relation of this affair will be made public. For the hands of all that were present will add very much to the authority of the relation. I need not say what it will seem to import. Your grace has that to say for yourself, which, perhaps, few others can say that were present. You did not hear what a great part of the witnesses said. If that will pass for a sufficient excuse, your grace has no cause to complain of the badness of your hearing. But surely it will be better for the public, if such an excuse can be found, as will suffice for all that were present; and if all could agree to give the same excuse.

"It should seem, by the calling of you thither, that either there is, or there is like to be, a dispute concerning the truth of this child; and whensoever that matter comes to be tried, you are like to be judges. But if the judges are called to set their hands to an examination of witnesses, *ex parte* before the cause comes to be heard, it is a strange kind of pre-occupation, that will make all the world of the plaintiff's side; and be rather a prejudice than an advantage to the cause. I hope his majesty will be aware of this, and will, therefore, spare you this unnecessary trouble. Howsoever I thought it a part of my duty, to let your grace know what I have heard. With my daily prayers, I humbly crave your blessing and take leave. My good lord, your grace's most obliged and most obedient son and servant,

W. ASAPH."

The two following articles are extracted from Mr. Hargrave's MS. mentioned in the Case of Magdalen College.

"Sunday, July 1, 1705. Upon a serious discourse with the earl of Clarendon before morning prayer, as I had done several times before, of the scandalous report, now lately revived and especially by the bishop of Kilmore at captain Hutton's house the Sunday preceding, viz. 24th June, when I went to make a

VOL. XII.

visit, that his lady should say that the queen had miscarried [to her knowledge] and that she told this to sir Thomas Clarges, with this addition, which was wholly new to me 'till that time, that 'she had something of the 'after birth in her hand.' I thought fit to acquaint the earl with it, that he might put a stop to that false and wicked report, which reflects so horribly upon the honor of the innocent king and queen and the legitimacy of the birth of the prince of Wales, and upon the reputation of his own lady, if such a story should go on to be propagated without check or controul, and might draw after it, if not sufficiently confuted, dismal and fatal consequences to the prejudice of the young king. He assured me that it was a false and scandalous imputation cast upon his wife, and that what she said was basely and wickedly misrepresented, and that she only told sir Thomas Clarges in his hearing (as she had done before to bishop Lloyd, then of St. Asaph, now of Worcester] that coming from court she had found the queen very ill, and in danger of miscarrying, and not in the least that she had actually miscarried, and that about a week after, the queen growing pretty well for one in her condition, being then big with child, her fears were happily over.

"The bishop of Kilmore several times since told me of this report concerning my lady Clarendon, and that he had his information from sir Walter Clarges who had it from his father sir Thomas, which I looking upon as a malicious invention and as an idle fiction and tale, never opened my lips about it, either to my lord Clarendon, before or after his excellent lady's death, or to any person whatsoever, either man or woman, but suppress it in my breast, giving not the least credit to it. This bishop was the first and only person that acquainted me with this story, untill some good while after (whether half a year or more I cannot positively swear) Mr. Henry Buckley, with whom I had long before contracted some kind of familiar conversation in St. James's park (which I kept up with him upon a principle of Christian charity to recover him if possible at proper and seasonable intervals and occasions from his avowed deism,) asked me if I had heard any thing relating to this matter. I replied, that I believed that it was an arrant lye and slander, and added, that for his satisfaction I would ask my lord Clarendon about it, but to this he would give no way (upon my saying, that it was most highly reasonable, just and fair, that I should mention his name to my lord) and conjured me to the contrary; and to the best of my remembrance at this distance of time, obtained a firm promise from me not to say any thing of it to him. I asked him from whom he had his information, he desired me to excuse him and would never let me know his author. Now upon a recollection of all passages, I am still fully persuaded in my own mind (though possibly he might have met with this scandalous report from some other person) that this bishop was the very man, and

M

I must add, that I cannot be beaten out of this persuasion, unless that he will take a voluntary oath, that he never acquainted Mr. Buckley with it, which, I believe he will not dare to do.

"He says moreover, that when he made the first report of it to me, he desired me to enquire of my lord Clarendon about it, which I do not remember. But if he did, which I scarce believe, I judged it most rude and silly to carry an idle, infamous and incredible story to him, and to go on his errand with it when he might have gone himself, having been acquainted with my lord, ever since he was lord lieutenant of Ireland. I shall not here give a character of this Irish bishop, but only shall say in short, that I have found by a long conversation that he has an inveterate malice and prejudice to this noble lord, and that he has often times in common discourse endeavoured to run down his fame and blacken him with his gossiping stories.

"The same report about the queen's miscarriage being conveyed up and down (where mention is made since of the lady Clarendon and the bishop of Asaph, who is said to have received it from her ladyship,) which in truth and reality was no more than what I have written above, and the very same, though so wickedly and villainously perverted, in a diabolical paper, as I justly called it upon my first reading of it, I desired my lord for the vindication of the truth of things to write a letter to the bishop of St. Asaph, and inform him of these downright falsities, which find some kind of umbrage, under his name. He was pleased to promise me that he would write such a paper as I desired in a few days, and would leave copies in several friends hands, to be made use of hereafter as there should be occasion.

"THOMAS SMITH, D. D."

Mr. Spinckes's Attestation taken from another MS. Memorandum.

"That Wednesday June 3, 1702, having a fair opportunity for it, I took the freedom to inquire of the right honourable the earl of Clarendon concerning the report set abroad by a certain bishop, of my lady the late countess of Clarendon's having affirmed the queen to have miscarried, during the time she was said to be with child of the late prince of Wales. And his lordship was pleased to assure me that he had discoursed with the bishop upon that point, and told him that my lady did never say that the queen had miscarried, but only that she was ill, and it was much feared that she would miscarry: adding moreover that he might remember farther that about three days after this, my lady seeing him (the bishop) came to him with great joy, and told him the danger was over, that the queen was well again, and had not miscarried, as was feared. And this his lordship was pleased to give me free commission to testify in his name. His lordship also told me farther that the news of the queen's delivery being brought to my lady just as she came from the sacrament, she went immediately to visit the queen and the prince, and he

hopes nobly would think my lady so great a hypocrite, as to pay such a visit, and especially at that time, if she had not believed the birth to be real, and the child to be indeed the queen's.
N. SPINCKES."

The persons who (but for the Act of Settlement 12 and 13 W. 3, cap. 32.) and the acts against the succession of Papists and of those who married Papists, would have claim to the crown preferably to the house of Brunswick, are,

I. All the descendants of Anna Maria dutchess of Savoy, (only daughter of Henrietta Maria, daughter of Charles the first) viz.

1. Charles Emanuel (king of Sardinia) her son, and all his posterity.

2. Maria Adelhaid (dutchess of Burgundy and mother of Louis the 15th) her daughter and all her posterity.

II. Charles Lodowick, prince of Hesse Cassell) who was eldest son of Elizabeth queen of Bohemia; daughter of James the first) and the posterity of Charles his son and successor, and of Charlotte his daughter (who was second wife to Philip duke of Orleans and ancestress of the present duke of Orleans.)

III. All the posterity of Maria Amelia Electress of Bavaria (who was daughter of Wilhelmina, empress of Germany, daughter of Benedicta Henrietta dutchess of Hanover, daughter of Edward, second son of Elizabeth queen of Bohemia.)

The said Charles Lodowick and Edward were brothers of Sophia dutchess of Brunswick, afterwards electress of Hanover, mother of king George 1.

Fountainhall, under date January 18, 1688, says: "At privy council, upon the news of the queen's being with child, a Thanksgiving was appointed through Scotland. It was thought odd, that the Presbyterian meetings were not enjoined to keep it." The Order appointing the Thanksgiving I suppose to be the Article in the Appendix to the second Volume of Wodrow's History, No. 137, which is as follows:

'Act, January 17, 1688, for a Thanksgiving
'upon the Queen's being with child.

'Since it hath pleased Almighty God, the
'fountain of all life, by whom kings reign, and
'kingdoms are established, to grant unto the
'king's most excellent majesty, fresh hopes of
'royal issue by his most serene consort, our gra-
'cious queen Mary who (through the great good-
'ness and blessing of God) is now with child;
'and considering that the multiplying of the
'branches of the royal family, (especially issu-
'ing from our present sacred sovereign, James
'7, under whose auspicious, wise, and clement
'government we enjoy so much prosperity,
'peace and plenty) is a most desirable blessing,
'a native support, and strengthening of the
'crown, and, by just consequence, a public
'blessing to this kingdom, tending to the fur-
'ther security of the peace and happiness
'thereof; his majesty therefore (at the humble
'and earnest desire, and by the advice of his

‘ privy council) hath thought fit upon this important occasion, to set apart, and appoint a time, for rendering devout and solemn thanks to God, for this great mercy and blessing, and for offering public and hearty prayers to his divine majesty, to bless and preserve the sacred person of our dread sovereign lord the king, to prosper his reign with honourable and glorious successes, and to prolong his life, that he may see his childrens children, and his throne may be as the sun ; as also, that he may bless, preserve, and strengthen his royal consort the queen’s majesty, and make perfect his work begun for her, may save and defend her from all dangers and evil accidents, that what she hath conceived, may be preserved and happily brought forth, to the joy of our sovereign lord the king, the further security of his crown, and the happiness and establishment of this kingdom.

‘ For this end, his majesty, with advice foresaid, doth appoint and ordain, that the foresaid thanksgiving and prayers, be devoutly and solemnly performed, in all the parish-churches within the city and diocese of Edinburgh, upon the 29th day of January instant, and in all the other churches within this kingdom, upon the 19th day of February next ; and his majesty accordingly requires and commands, the most reverend and right reverend the archbishops and bishops, to take care, that in all the parish-churches within their respective dioceses, these prayers and thanksgivings be accordingly celebrate by all the ministers and presbyters under their jurisdiction, and that they cause intimation be made hereof, by reading of the same from the pulpits, in the several parish-churches, the Lord’s day immediately preceeding the said solemn days of public thanksgiving, *respective*. And, finally, his majesty charges and commands all his loving subjects, heartily to join and concur in these religious and dutiful performances, as they would shew their piety and loyalty, in praying for the life of the king, the increase of his royal issue, the further security of the crown, and the establishment of peace and happiness in this his ancient kingdom. And that these presents may be made public and known, his majesty ordains his Lyon king at arms, and his brethren, heralds, the macers of the privy council, and pursuivants, to pass to the market-cross of Edinburgh, and other places needful, and there, by open proclamation, and with all accustomed solemnities on extraordinary occasions, make publication of the premisses, that none may pretend ignorance. Extracted forth of the records of privy council, by sir William Paterson, baronet, clerk of his majesty’s most honourable privy council.

‘ WILLIAM PATERSON, Cl. Sec. Concilii.
‘ God save the king.’

Mr. Barrington (Obs. on Magna Charta, cap. 7.) says, That one of the reasons for the

provision, ‘ Vidua — maneat in capitali mesuagio mariti sui per quadraginta dies post obitum mariti sui,’ was the apprehension of supposititious children. In the same part of his work, after mentioning the provisions enacted in various codes of law against such suppositions, he takes notice (‘ notwithstanding it is,’ to use his words, ‘ the fashion at present to laugh at what is called bishop Burnet’s warming-pan-story,’) of lord Clarendon’s mention of the distrust expressed by his niece the princess of Denmark, and of the representation of some of the French chroniclers that such an imposition was actually carried into execution by one of the antient queens of France.

It may be worth notice, that one of the arguments against the genuineness of the pretended prince of Wales, is very much impaired, if not altogether destroyed, by the undisputed fact, that in June, 1692, James the second’s queen was, in France, delivered of a daughter, named Mary Louisa.

Burnet’s Account of this matter is as follows :

“ The queen’s delivery was the subject of all mens’ discourse. And since so much depends on this, I will give as full and as distinct an account of all that related to that matter, as I could gather up either at that time or afterwards. The queen had been for six or seven years in such an ill state of health, that every winter brought her very near death. Those about her seemed well assured that she, who had buried all her children soon after they were born, and had now for several years ceased bearing, would have no more children. Her own priests apprehended it, and seemed to wish for her death. She had great and frequent distempers, that returned often, which put all people out of their hopes or fears of her having any children. Her spirits were now much on the fret. She was eager in the prosecution of all the king’s designs. It was believed, that she had a main hand in driving him to them all. And he, perhaps, to make her gentler to him in his vagrant amours, was more easy to her in every thing else. The lady Dorchester was come back from Ireland : and the king went oft to her. But it was visible, she was not like to gain that credit in affairs, to which she had aspired : and therefore this was less considered.

“ In September, the former year, the queen went to the Bath, where, as was already told, the king came and saw her, and staid a few days with her. She after that pursued a full course of bathing : and, having resolved to return in the end of September, an accident took her to which the sex is subject : and that made her stay there a week longer. She came to Windsor on the 6th of October. It was said, that, at the very time of her coming to the king, her mother, the duchess of Modena, made a vow to the lady Loretto, that her daughter might by her means have a son. And it went

current, that the queen believed herself to be with child in that very instant, in which her mother made her vow: of which, some travellers have assured me, there was a solemn record made at Loretto. A conception said to be thus begun looked suspicious. It was now fixed to the 6th of October: so the nine months were to run to the 6th of July. She was in the progress of her big belly let blood several times: and the most astringent things that could be proposed were used.

"It was soon observed, that all things about her person were managed with a mysterious secrecy, into which none were admitted but a few Papists. She was not dressed nor undressed with the usual ceremony. Prince George told me, that the princess went as far in desiring to be satisfied by feeling the motion, after she said she was quick, as she could go without breaking with her: and she had sometimes staid by her even indecently long in mornings, to see her rise, and to give her her shift: but she never did either. She never offered any satisfaction in that matter by letter to the princess of Orange, nor to any of the ladies of quality, in whose word the world would have acquiesced. The thing upon this began to be suspected: and some libels were writ, treating the whole as an imposture. The use the queen made of this was, to say, that since she saw some were suspecting her as capable of so black a contrivance, she scorned to satisfy those who could entertain such thoughts of her. How just soever this might be with relation to the libellers, yet certainly, if she was truly with child, she owed it to the king and herself, to the king's daughters, but most of all to the infant she carried in her belly, to give such reasonable satisfaction, as might put an end to jealousy. This was in her power to do every day: and her not doing it gave just grounds of suspicion.

"Things went thus on till Monday in Easter week. On that day the king went to Rochester, to see some of the naval preparations; but was soon sent for by the queen, who apprehended she was in danger of miscarrying. Dr. Scarborough was come to Knightsbridge to see bishop Ward, my predecessor, who had been his antient friend, and was then his patient: but the queen's coach was sent to call him in all haste, since she was near miscarrying. Dr. Windebank, who knew nothing of this matter, staid long that morning upon an appointment for Dr. Wallgrave, another of the queen's physicians, who the next time he saw him excused himself, for the queen, he said, was then under the most apparent signs of miscarrying. Of this the doctor made oath: and it is yet extant.

"On the same day the countess of Clarendon, being to go out of town for a few days, came to see the queen before she went, knowing nothing of what had happened to her. And she, being a lady of the bedchamber to queen dowager, did, according to the rule of the court, go into the queen's bedchamber without

asking admittance. She saw the queen a-bed, bemoaning herself in a most doleful manner, saying often, 'undone, undone:' and one that belonged to her carried somewhat out of the bed, which she believed was linen taken from the queen. She was upon this in some confusion: and the countess of Powis coming in, went to her, and said with some sharpness, what do you here? and carried her to the door. Before she had got out of the court, one of the bedchamber women followed her, and charged her not to speak of any thing she had seen that day. This matter, whatever was in it, was hushed up: and the queen held on her course.

"The princess had miscarried in the spring. So, as soon as she had recovered her strength, the king pressed her to go to the Bath, since that had so good an effect on the queen. Some of her physicians, and all her other friends, were against her going. Lower, one of her physicians told me, he was against it: he thought, she was not strong enough for the Bath, though the king pressed it with an unusual vehemence. Millington, another physician, told the earl of Shrewsbury, from whom I had it, that he was pressed to go to the princess, and advise her to go to the Bath. The person that spoke to him told him, the king was much set on it, and that he expected it of him, that he would persuade her to it. Millington answered, he would not advise a patient according to direction, but according to his own reason: so he would not go. Scarborough and Witherly took it upon them to advise it: so she went thither in the end of May.

"As soon as she was gone, those about the queen did all of the sudden change her reckoning, and began it from the king's being with her at Bath. This came on so quick, that, though the queen had set the fourteenth of June for her going to Windsor, where she intended to lie in, and all the preparations for the birth and for the child were ordered to be made ready by the end of June, yet now a resolution was taken for the queen's lying in at St. James's; and directions were given to have all things quickly ready. The Bath water either did not agree with the princess, or the advices of her friends were so pressing, who thought her absence from the court at that time of such consequence, that in compliance with them she gave it out it did not, and that therefore she would return in a few days.

"The day after the court had this notice, the queen said, she would go to St. James's, and look for the good hour. She was often told, that it was impossible upon so short a warning to have things ready. But she was so positive, that she said, she would lie there that night, though she should lie upon the boards. And at night, though the shorter and quicker way was to go from Whitehall to St. James's through the park, and she always went that way, yet now, by a sort of affectation, she would be carried thither by Charing-cross through the Pall-mall. And it was given out by all her train, that she was going

to be delivered. Some said, it would be next morning; and the priests said very confidently that it would be a boy.

“The next morning, about nine o’clock, she sent word to the king, that she was in labour. The queen dowager was next sent to, but no ladies were sent for: so that no women were in the room, but two dressers and one under dresser, and the midwife. The earl of Arran sent notice to the countess of Sunderland, so she came. The lady Bellasis came also in time. The Protestant ladies that belonged to the court were all gone to church before the news was let go abroad; for it happened on Trinity Sunday, it being that year on the tenth of June. The king brought over with him from Whitehall a great many peers and privy counsellors. And of these eighteen were let into the bed-chamber, but they stood at the furthest end of the room; the ladies stood within the alcove. The curtains of the bed were drawn close, and none came within them, but the midwife and an under dresser. The queen lay all the while a bed: and, in order to the warming one side of it, a warming pan was brought, but it was not opened, that it might be seen that there was fire and nothing else in it: so here was matter for suspicion, with which all people were filled.

“A little before ten, the queen cried out as in a strong pain, and immediately after the midwife said aloud, she was happily brought to bed. When the lords all cried out of what, the midwife answered, the queen must not be surprised: only she gave a sign to the countess of Sunderland, who upon that touched her forehead, by which, it being the sign before agreed on, the king said he knew it was a boy. No cries were heard from the child, nor was it shewed to those in the room. It was pretended more air was necessary. The under dresser went out with the child, or somewhat else, in her arms to a dressing room, to which there was a door near the queen’s bed; but there was another entry to it from other apartments.

“The king continued with the lords in the bed-chamber for some minutes, which was either a sign of much phlegm upon such an occasion; for it was not known whether the child was alive or dead: or it looked like the giving time for some management. After a little while they went all into the dressing room: and then the news was published. In the mean while, nobody was called to lay their hands on the queen’s belly, in order to a full satisfaction. When the princess came to town three days after, she had as little satisfaction given her. Chamberlain, the man-midwife, who was always ordered to attend her labour before, and who brought the plaisters for putting back the milk, wondered that he had not been sent to. He went according to custom with the plaisters, but he was told they had no occasion for him. He fancied, that some other person was put in his place; but he could not find that any had it. All that concerned the

milk, or the queen’s purgations, was managed still in the dark. This made all people inclined more and more to believe, there was a base imposture now put on the nation. That still increased. That night one Hemings, a very worthy man, an apothecary by his trade, who lived in St. Martin’s-lane, the very next door to a family of an eminent Papist: (Brown, brother to the viscount Montacute, lived there) The wall between his parlour and theirs being so thin, that he could easily hear any thing that was said with a louder voice, he (Hemings) was reading in his parlour late at night, when he heard one coming into the neighbouring parlour, and say with a doleful voice, the prince of Wales is dead; upon which a great many that lived in the house came down stairs very quick: upon this confusion he could not hear any thing more; but it was plain, they were in a great consternation. He went with the news next morning to the bishops in the Tower. The countess of Clarendon came thither soon after, and told them, she had been at the young prince’s door, but was denied access: she was amazed at it; and asked, if they knew her; they said, they did; but that the queen had ordered, that no person whatsoever should be suffered to come in to him. This gave credit to Hemings’s story, and looked as if all was ordered to be kept shut up close, till another child was found. One, that saw the child two days after, said to me, that he looked strong, and not like a child so newly born. Windebank met Walgrave the day after this birth, and remembered him of what he had told him eight weeks before. He acknowledged what he had said, but added, that God wrought miracles: to which no reply could, or durst be made by the other: it needed none. So healthy a child being so little like any of those the queen had born, it was given out that he had fits, and could not live; but those who saw him every day observed no such thing. On the contrary the child was in a very prosperous state. None of those fits ever happened, when the princess was at court; for she could not be denied admittance, though all others were. So this was believed to be given out to make the matter more credible. It is true, some weeks after that, the court being gone to Windsor, and the child sent to Richmond, he fell into such fits, that four physicians were sent for. They all looked on him as a dying child. The king and queen were sent for. The physicians went to a dinner prepared for them; and were often wondering that they were not called for. They took it for granted that the child was dead. But, when they went in after dinner to look on him, they saw a sound healthy child, that seemed to have had no sort of illness on him. It was said, that the child was strangely revived of a sudden. Some of the physicians told Lloyd, bishop of St. Asaph, that it was not possible for them to think it was the same child. They looked on one another, but durst not speak what they thought.

"Thus I have related such particulars as I could gather of this birth: To which some more shall be added, when I give an account of the proof that the king brought afterwards to put this matter out of doubt; but by which it became indeed more doubtful than ever. I took most of these from the informations that were sent over to the prince and princess of Orange, as I had many from the vouchers themselves. I do not mix with these the various reports that were, both then and afterwards, spread of this matter, of which bishop Lloyd has a great collection, most of them well attested. What truth soever may be in these, this is certain, that the method in which this matter was conducted from first to last was very unaccountable. If an imposture had been intended, it could not have been otherwise managed. The pretended excuse that the queen made, that she owed no satisfaction to those who could suspect her capable of such base forgery, was the only excuse that she could have made, if it had been really what it was commonly said to be. She seemed to be soon recovered, and was so little altered by her labour, either in her looks or voice, that this helped not a little to increase jealousies. The rejoicings over England upon this birth were very cold and forced. Bonfires were made in some places, and a set of congratulatory addresses went round the nation. None durst oppose them. But all was formal, and only to make a shew.

"The prince and princess of Orange received the news of this birth very decently. The first letters gave not those grounds of suspicion that were sent to them afterwards. So they sent over Zuytlestein to congratulate: and the princess ordered the prince of Wales to be prayed for in her chapel. Upon this occasion, it may not be improper to set down what the princess said to myself on this subject two years before. I had asked her, in the freedom of much discourse, if she knew the temper of her own mind, and how she could bear the queen's having a son. She said, she was sure it would give her no concern at all on her own account: God knew best what was fit for her: And, if it was not to serve the great ends of providence, she was sure that, as to herself, she would rather wish to live and die in the condition she was then in. The advertisements formerly mentioned came over from so many hands, that it was impossible not to be shaken by them. It was also taken ill in England, that the princess should have begun so early to pray for the pretended prince: Upon which the naming him discontinued. But this was so highly resented by the court of England, that the prince, fearing it might precipitate a rupture, ordered him to be again named in the prayers."

"A great meeting was called, not only of all the privy counsellors and judges, but of all the nobility then in town. To these the king complained of the great injury that was done both him and the queen by the prince of Orange,

who accused them of so black an imposture: He said, he believed there were few princes then alive, who had been born in the presence of more witnesses than were at his son's birth: He had therefore called them together, that they might hear the proof of that matter. It was first proved, that the queen was delivered abed, while many were in the room; and that they saw the child soon after he was taken from the queen by the midwife. But in this the midwife was the single witness; for none of the ladies had felt the child in the queen's belly. The countess of Sunderland did indeed depose, that the queen called to her to give her her hand, that she might feel how the child lay, to which she added, which I did, but did not say, whether she felt the child, or not: And she told the dutchess of Hamilton, from whom I had it, that when she put her hand into the bed, the queen held it, and let it go no lower than her breasts. So that really she felt nothing. And this deposition, brought to make a shew, was an evidence against the matter, rather than for it; and was a violent presumption of an imposture, and of an artifice to cover it. Many ladies deposed, that they had often seen the marks of milk on the queen's linen, near her breasts. Two or three deposed, that they saw it running out at the nipple. All these deposed, that they saw milk before the pretended delivery. But none of them deposed concerning milk after the delivery, though nature sends it then in greater abundance: And the queen had it always in such a plenty, that some weeks passed after her delivery, before she was quite freed from it. The ladies did not name the time in which they saw the milk, except one, who named the month of May. But, if the particulars mentioned before, that happened on Easter Monday, are reflected on, and if it appears probable by these that the queen miscarried at that time; then all that the ladies mentioned of milk in her breasts, particularly she that fixed it to the month of May, might have followed upon that miscarriage, and be no proof concerning the late birth. Mrs. Pierce, the landress, deposed that she took linen from the queen's body once, which carried the marks of a delivery. But she spoke only to one time. That was a main circumstance. And, if it had been true, it must have been often done, and was capable of a more copious proof, since there is occasion for such things to be often looked on, and well considered. The lady Wentworth was the single witness that deposed, that she had felt the child move in the queen's belly. She was a bed chamber woman, as well as a single witness: And she fixed it on no time. If it was very early, she might have been mistaken: Or if it was before Easter Monday, it might be true, and yet have no relation to this birth. This was the substance of this evidence, which was ordered to be enrolled and printed. But, when it was published, it had a quite contrary effect to what the court expected from it. The presumption of law before this was all in fa-

your of the birth, since the parents owned the child: So that the proof lay on the other side, and ought to be offered by those who called it in question. But, now that this proof was brought, which was so apparently defective, it did not lessen but increase the jealousy with which the nation was possessed: For all people concluded, that, if the thing had been true, it must have been easy to have brought a much more copious proof than was now published to the world. It was much observed, that princess Anne was not present. She indeed excused herself. She thought she was breeding: And all motion was forbidden her. None believed that to be the true reason; for it was thought, that the going from one apartment of the court to another could not hurt her. So it was looked on as a colour that shewed she did not believe the thing, and that therefore she would not by her being present seem to give any credit to it."

The following passage in the same author also relates to this Case:

"The duchess of York fell into an ill habit of body, which some imputed to the effect of some of the duke's distempers communicated to her. A story was set about, and generally believed, that the earl of Southesk, that had married a daughter of duke Hamilton's, suspecting some familiarities between the duke and his wife, had taken a sure method to procure a disease to himself, which he communicated to his wife, and was by that means set round till it came to the duchess, who was so tainted with it that it was the occasion of the death of all her children, except the two daughters, our two queens; and was believed the cause of an illness under which she languished long, and died so corrupted, that in dressing her body after her death, one of her breasts burst, being a mass of corruption. Lord Southesk was for some years not ill pleased to have this believed. It looked like a peculiar strain of revenge, with which he seemed much delighted. But I know he has to some of his friends denied the whole of the story very solemnly. Another acted a better part. He did not like a commerce that he observed between the duke and his wife. He went and expostulated with him upon it. The duke fell a commending his wife much. He told him he came not to seek his wife's character from him: the most effectual way of commending her, was to have nothing to do with her. He added, that if princes would do those wrongs to subjects who could not demand such reparations of honour as they could from their equals, it would put them on secreter methods of revenge: for some injuries were such, that men of honour could not bear them. And, upon a new observation he made of the duke's designs upon his wife, he quitted a very good post, and went with her into the country, where he kept her till she died. Upon the whole matter the duke was often ill. The children were born with ulcers, or they broke out upon them soon

after: and all his sons died young, and unhealthy. This has, as far as any thing that could not be brought in the way of proof, prevailed to create a suspicion, that so healthy a child as the pretended prince of Wales could neither be his, nor be born of any wife with whom he had lived long. The violent pain that his eldest daughter had in her eyes, and the gout which has early seized our present queen, are thought the dregs of a tainted original. Willis, the great physician, being called to consult for one of his sons, gave his opinion in those words, '*Mala Stamina Vitæ*;' which gave such offence, that he was never called for afterwards."

And relating what occurred in the House of Lords, in the interval between the Abdication of king James and the accession of king William, and Queen Mary, he says:

"It was proposed, that the birth of the pretended prince might be examined into. Some pressed this, not so much from an opinion that they were bound to assert his right, if it should appear that he was born of the queen, as because they thought it would justify the nation, and more particularly the prince and the two princesses, if an imposture in that matter could have been proved. And it would have gone far to satisfy many of the weaker sort, as to all the proceeding against king James. Upon which I was ordered to gather together all the presumptive proofs that were formerly mentioned, which were all ready to have been made out. It is true, that these did not amount to a full and legal proof: yet they seemed to be such violent presumptions, that, when they were all laid together, they were more convincing than plain and downright evidence: for that was liable to the suspicion of subornation: whereas the other seemed to carry on them very convincing characters of truth and certainty. But, when this matter was in private debated, some observed, that, as king James by going about to prove the truth of the birth, and yet doing it so defectively, had really made it more suspicious than it was before; so, if there was no clear and positive proof made of an imposture, the pretending to examine into it, and then the not being able to make it out beyond the possibility of contradiction, would really give more credit to the thing, than it then had, and, instead of weakening it, would strengthen the pretension of his birth.

"When this debate was proposed in the House of Lords, it was rejected with indignation. He was now sent out of England to be bred up in France, an enemy both to the nation, and to the established religion: It was impossible for the people of England to know, whether he was the same person that had been carried over, or not: if he should die, another might be put in his room, in such a manner that the nation could not be assured concerning him: the English nation ought not to send into another country for witnesses to prove that he was their prince; much less receive one upon the testi-

money of such, as were not only aliens, but ought to be presumed enemies: it was also known, that all the persons, who had been the confidants in that matter, were conveyed away: so it was impossible to come at them, by whose means only the truth of that birth could be found out. But while these things were fairly debated by some, there were others who had deeper and darker designs in this matter.

"They thought, it would be a good security for the nation, to have a dormant title to the crown lie as it were neglected, to oblige our princes to govern well, while they would apprehend the danger of a revolt to a pretender still in their eye. Wildman thought it was a deep piece of policy to let this lie in the dark, and undecided. Nor did they think it an ill precedent, that they should so neglect the right of succession, as not so much as to enquire into this matter. Upon all these considerations no further enquiry was made into it. It is true, this put a plausible objection in the mouth of all king James's party: here, they said, an infant was condemned, and denied his right, without either proof or enquiry. This still takes with many in the present age. And, that it may not take more in the next, I have used more than ordinary care to gather together all the particulars that were then laid before me as to that matter."

Granger, (who notices that queen Anne's children were supposed to have died from the same cause to which Burnet imputes the diseases of queen Mary and queen Anne) says:

"The revenge of the earl of Southesk on king James, when duke of York, who is said to have caught a virulent distemper, which that nobleman communicated with design to his lady, was supposed to be the occasion of the death of several of the children that he had by both his queens, and gave credit to the report of the prince being a supposititious child. In 1699, was published a pamphlet, entitled, 'A brief discovery of the true mother of the pretended prince of Wales, &c. by William Fuller, gent. some time page of honour to the late queen, in France.' The author tells us, that the pretended prince was son of one Mary Gray, an Irish woman, who, in May 1688, was brought over to England, in the Monmouth yacht, by the countess of Tyrconnel. That she was delivered of a child at St. James's, on the tenth of June following; and about the middle of July was, against her inclination, conveyed to the convent of benedictine nuns at Paris, whence she soon after made her escape. That he was commanded by the queen to go to England, with letters to lord Montgomery, and others in relation to this woman: and that they were 'to take care to place people on the coast of England, that might inform them when she landed; and then they were positively commanded to use all endeavours to get her dispatched, to prevent whatever design she might pretend to.' But being, as he informs us, soon apprehended in France,

and effectually secured, he believed that she was murdered; as he could not get the least intelligence of her, though he had made the strictest enquiry. The well known story of conveying the child to the queen's apartment, in a warming-pan, is attributed to Fuller. But it should be observed, that Mrs. Margaret Dawson, one of the gentlewomen of the queen's bed-chamber, deposed, that 'she saw fire carried into the queen's room, in a warming-pan, to warm the bed; and that the deponent stirred not from the queen, until her majesty was delivered of a son.' Fuller," [See in this Collection his Case, A. D. 1702.] "was a great dealer in Plots, and was detected in several gross falsehoods, in some of his pretended discoveries, was declared an impostor by the house of commons."

There is in Wodrow, the following curious Relation of an incident in Scotland concerning the Genuineness of the Pretender:

"I shall shut up this section with some narrative of the trouble the late Reverend Mr. Charles Gordon, minister at this time of Campvere, and since the revolution minister, first at Dalmenie, then at Ashkirk, fell under, for his not owning the Legitimacy of the pretended prince of Wales. It is a pretty singular case, and I give it from the original Narrative, written, November this year, by Mr. Gordon, communicated to me by his relations, which consists of some sheets of paper; but I shall reduce it within as narrow a compass as I can with any measure of distinctness and clearness.

"The Rev. Mr. Gordon's character is so savoury yet in this church, that none will question what he hath left under his hand. Many yet alive know how remarkable and eminent he was for piety and learning: and the general assembly of the church was so much apprised of this, that he was very harmoniously voted to be professor of divinity at Aberdeen; but such was his own extremity of modesty, and affection for his people, that he could never actively comply, and died some years ago minister of Ashkirk, his removal being indeed a general stroke to this church. His great literature, solidity, and gravity made him universally regretted.

"Mr. Gordon, minister of the Scots congregation at Campvere, had come over to see his friends in the north, August this year, and coming to Edinburgh upon some business, in his return to Campvere in September, the noise of the prince of Orange broke up, and the council toward the beginning of October emitted a Proclamation, 'discharging all subjects, on the highest peril, to leave the kingdom, without a licence from the council, or one of their number.' It was necessary that Mr. Gordon should go back to his charge as soon as possible, and therefore knowing nothing could be laid to his charge, and being not in the least obnoxious to suspicion, he applied by

a friend to the Lord Register, as a counsellor, for a pass; who said, the pass being for Holland, it was necessary he should speak to the chancellor anent it, and the other frankly consented he should do so. When the chancellor was spoke to, he made an objection against Mr. Gordon's brother, a worthy factor in Holland, some years ago dead, who, he alleged, was none of the king's friends, and desired the register to take a care how he gave Mr. Gordon a pass. The register was hearty and kind in the matter, and acquainting Mr. Gordon of what passed, promised, within three or four days, again to deal with my lord Perth.

"Accordingly, October 12, being put in mind of his promise, he undertook to speak to the chancellor in the forenoon at the council, and ordered Mr. Gordon to wait on him in the Parliament Closs, which he did; and when attending there met with an odd incident, which deserves a room here, as what may serve to give a *vidimus* of the temper of one of the present prime managers. At the rising of the council, the archbishop of Glasgow comes out in his robes, whom Mr. Gordon had never seen before, and knew him not, save that he was a bishop by his garb. It seems, the bishop noticed very narrowly all who did not give him a cap. Mr. Gordon was walking at some considerable distance, and took a turn a little further off the way the bishop seemed to be going. It seems, the bishop observed him at distance, and saw good, after he was gone by Mr. Gordon almost at the breadth of the closs, to return and come straight to him, and accost him in a very odd manner.

"When he came up, he asked Mr. Gordon rudely, What are you, Sir? Mr. Gordon answered, Why do you enquire? Says the bishop, Why do you look with so thravn a countenance? The other replied, My countenance is not thravn, I look as I ordinarily use to do. The bishop said, If your countenance be ordinarily so, it is a very thravn countenance. Says Mr. Gordon, Sir, I wonder why you imagine so, for I have the same countenance that God hath given me. Adds the bishop, you should not look uncivilly upon gentlemen. The other replied, You are mistaken; for I use not, as I think, to look uncivilly or unpleasantly upon any man. Upon this the bishop went off as indiscreetly as he came up, to the great surprise of Mr. Gordon and the spectators. The rencounter was odd, and I set it down at full length, as I find it in the abovementioned narrative. When Mr. Gordon enquired, who it was that had thus accosted him, and had got his character, he began to think it was rather his covered head, than his thravn countenance, brought about this strange attack.

"But to return, when the register came out, he told he had quite forgot his business; but should undoubtedly mind it at three of the clock, when he met with the chancellor in the treasury. Mr. Gordon began to fear there might be more difficulty, than he apprehended, in his business, and so went up to the castle at

two, and got access to the duke of Gordon, who knew his relations in the north, and laid his case before him. The duke was very civil, and promised to speak with the chancellor at three, in the exchequer, and ordered him to put him in mind by a macer. He waited on punctually at the hour, and the duke and the register promised to speak presently to the chancellor. In a little the duke was pleased to come to the door, and acquaint Mr. Gordon that he had spoken, and the register seconded him, and the chancellor was desirous to speak with him before he granted a pass, and that it was fit he should name an hour, asking him in a friendly way, whether he were content with this. Mr. Gordon thanked his grace for his kindness, and said, He was satisfied to wait on the chancellor when he pleased, and doubted not to satisfy his lordship in any thing he could reasonably demand. The duke went in, and Mr. Gordon waited on to hear the chancellor's time for a private communing, never once dreaming of a public examination. But very suddenly he was called in before the lords of the treasury, by one of the macers. And the chancellor interrogated him as follows; which, with his answers, I set down as I find them in Mr. Gordon's narrative.

Chancellor. Mr. Gordon, I am informed you are an ill man, and a person of bad principles, and disaffected to the government. *Gordon.* My lord, if your lordship has been so informed, I must beg liberty to say, that the information is wrong and unjust. *Chancellor.* I am informed, your business and design in coming to Scotland, is quite another thing than you pretend and give out. *Gordon.* My business is nothing else than that I pretend and profess; but if your lordship suspect any thing, I am willing to give all the satisfaction I can. *Chanc.* Do you own the king's authority? *Gordon.* Yes, my lord. *Chanc.* Have you preached since you came to the country? *Gordon.* Yes. *Chanc.* Did you pray for the king? *Gordon.* Yes, my lord. *Chanc.* Do you pray for the royal family? *Gordon.* Yes. *Chanc.* Do you pray for the prince of Wales? *Gordon.* No. *Chanc.* Why not for the prince of Wales? *Gordon.* There is no particular order for our praying for him, and I have not used to pray for all the particular branches of the royal family by form. *Chanc.* It is no limiting of the spirit, to pray for all the branches of the royal family by form. *Gordon.* My lord, I have not been used to pray by forms. *Chanc.* Whom do you mean when you pray for the royal family? *Gordon.* All the princes and princesses of the family. *Chanc.* Do you not include and intend the prince of Wales? *Gordon.* My lord, I do not exclude him. *Chanc.* But do you not include him? Mr. Gordon said nothing, and the Chancellor went on: There is the matter; Sir, I perceive I have not been mistaken nor misinformed concerning you, what for a man you are. *Gordon.* I am sorry if your lordship apprehend ill concerning me. *Chanc.* Do you not think that the king

hath a son, or that the prince of Wales is heir to the crown? Mr. Gordon was silent. *Chanc.* Why do you not answer? do you doubt of such a thing? *Gordon.* My lord, I do not meddle in these matters, nor am I a competent judge of them. *Chanc.* Sir, if you were your father's eldest son, and he had ten chal-ders of victual by year to bestow upon you, and another should come and take you by the throat, and say, Sir, you are a rogue, you are not such a man's son, and you shall not enjoy his estate, what would you say to that? *Gordon.* I hope your lordship will not make application of that comparison to any thing I have said. *Chanc.* Sir, you are the first that ever called the thing in question, and you have said enough to hang an hundred men. But remove you, you shall have the mind and judgment of the rest of the lords. And a macer was called to take Mr. Gordon away, and keep him till further order. In about a quarter of an hour he was called in again.

"Then the Chancellor said, Mr. Gordon, here is a paper you must subscribe. The tenor of it was. 'I Mr. Charles Gordon, minister of the gospel at Campvere, do own and acknowledge the king's son, prince of Scotland and Wales, as apparent heir of the crown, and do promise to pray for him as such.'

"When this Paper was read, Mr. Gordon answered, My lord, I must beg liberty to be excused, I cannot sign this paper in the terms, in which it stands, I am willing to declare, and subscribe that I do not deny, nor disown the prince of Wales. *Chanc.* Why do you not then own and acknowledge him? You must subscribe it as it stands. *Gordon.* That I cannot do, my lord. Then the macer was called to remove him. When going away, the clerk spake to him aside, and desired him to consider, there was nothing in the paper but a declaration, that the prince was apparent heir, and that imported no more than, for what we know and appears to us; and when the king, and queen, and court own him as such, then it appears to us. This staggered Mr. Gordon a little, till, he took up the paper and read it, and considered, that the grammatical sense of the word was not meant, but the forensick and law sense was chiefly to be considered in this case. Then he laid it down again on the table, saying, he could not in conscience sign it.

"What? says the Chancellor, pretend you conscience in refusing to own the king's son as apparent heir? *Gordon.* I cannot help my weakness; conscience cannot be constrained. *Chanc.* Whether or not, failing the prince of Wales, would you acknowledge the princess of Orange as apparent heir to the crown? *Gordon.* Yes, my lord. *Chanc.* And why not the prince of Wales now? Mr. Gordon said nothing. *Chanc.* There he is taken; for there is the matter, Sir, doubt you, or how dare you question the one more than the other? Would you not own my eldest son as my heir? *Gordon.* Yes, my lord, I

know nothing to the contrary. *Chanc.* Why not then the king's son? Would you not own the duke of Gordon as heir to Lewis marquis of Huntley? *Gordon.* Yes.

"Then the duke said, Mr. Charles, why do you doubt the prince of Wales to be heir apparent more than the princess of Orange? you were not witness to the birth of the one more than the other. *Gordon.* Truly, my lord, for what I know I never saw her highness. The chancellor vehemently urged Mr. Gordon to give his reasons of doubt, and mixed many threats. Mr. Gordon still declined, adding he did not dip into those matters, that he was a plain ignorant, simple man, and begged his lordship would not take advantage against him, and took all the lords witness he did not deny or disown the prince of Wales. The chancellor said, Why then do you not own him? this is such a mortal sin, a crime, that it is enough to damn you. *Gordon.* I hope there is more mercy with God than to damn me for ignorance and weakness. *Chanc.* It is enough to damn you and a thousand with you, for by your calling this in question, you are guilty of their sin and damnation who follow your example. *Gordon.* I hope the Lord will preserve me from being guilty of any person's damnation, for, according to my measure, I have endeavoured to keep a conscience void of offence, either to God or man. *Chanc.* Sir, you are a person neither of good principles nor practice, and you deserve, &c. *Gordon.* My lord, I am sorry that your lordship hath received ill impressions of me.

"Then he was removed, and in a little time sent up under a guard to the castle. The warrant was directed to the duke of Gordon, or his depute, and none of them being within, he was kept in the guard, and a private chamber of one of his name, some hours. While there, he had many peaceful and comfortable reflections upon the course and progress of this surprising scene of suffering, which he sets down with much solidity, and at such length, as I cannot give an abstract of them. He regrets that he was called to suffer upon a point that was so much of a civil nature, and would have chosen rather to have his sufferings stated upon a matter of faith, but is fully satisfied what was carved out to him was a matter of great importance, even to religion. He had some fears of the consequences of this incident to his brethren, Presbyterian ministers: And one of the counsellors said, if some people had gotten their will of Mr. Gordon, in a few days not a Presbyterian minister durst have been seen in Scotland. But the chancellor's rashness in starting such questions, was displeasing to all the wiser set of counsellors, who thought such questions most unseasonable and impolitic at this juncture.

"When Mr. Gordon is in the castle some hours, a friend came up to him from the duke of Gordon and register, desiring him to send down a petition for liberation to the chancellor, and they would use their interest to get him

liberate. When Mr. Gordon is in a strait what to do, another friend comes up from the advocate upon the same errand, with a warrant to discourse Mr. Gordon in private. The advocate by him signified he was intirely a stranger to Mr. Gordon, but was much concerned at what had passed, and had used freedom with the chancellor for his imprudence in insisting upon such heads with Mr. Gordon, and had ground to assure him, that if he petitioned he should be liberate. In short, the gentleman assured him, that several of the lords had reasoned the matter so plainly with the chancellor, as he was now repenting what he had done. Mr. Gordon returned his thanks for this great kindness, but told, he did not know how to petition, since he could not confess guilt, whereof he was not conscious. He was told, that was not expected, and he needed not touch at any thing that passed, but only seek his liberty, and if any thing had passed that had offended the chancellor, declare he was sorry for it.

"This appearing safe to Mr. Gordon, he wrote the following letter. 'Edinburgh castle, 'October 12. My lord chancellor, I am here 'prisoner by your lordship's order, where ' (saving God's good pleasure) I am loth to 'stay, detained from my charge; therefore I 'humbly beg your lordship will set me at liberty, and give me a pass to return to Campvere. If in any thing I be mistaken by, or 'have offended your lordship, I am sorry for 'it; for I desire to give no offence to Jew nor 'Gentile, nor to the church of God.

'I am, my lord, your lordship's

'Most humble Servant,

'CHARLES GORDON.'

"This was sent down to the advocate, who said he liked it well enough, but was afraid the sting in the tail of it might offend. But being told, by one present, it was a scripture expression, and ought not to offend, it was sent forward; and the Chancellor sent up a warrant for Mr. Gordon's liberation: which as far as he can remember, was to this purpose.

'That whereas it is for his majesty's service 'that Mr. Charles Gordon, prisoner in the 'castle, be set at liberty for reasons whereof I 'shall satisfy the council at their first meeting, 'therefore, &c.' in common form. Mr. Gordon remarks that if it was for his majesty's interest to liberate him, it had been more for his interest, according to those reasons which, he was of opinion, swayed most with the chancellor, that he had not been imprisoned.

"When the duke of Gordon came home about twelve at night, the orders and liberation were presented to him. He called Mr. Gordon, and spake to him alone, and signified his sorrow for his trouble, and blamed him for signifying his contentment to speak with the Chancellor. Mr. Gordon answered, he was conscious of his innocency, and never dreamed the Chancellor would have publicly examined him, or fallen upon such a subject; and he imagined he was the first that had been examined upon such a subject. The duke said, But your fault was that ye owned the princess of Orange; if you had not owned the one more than the other, you had done well. Mr. Gordon begged liberty to say, that was strange, and he could not but think it unjust, and also imprudent and unwise in the chancellor to set up an inquisition to torture and rack mens minds and hearts for what is only secret and latent there. The duke said, Well, Mr. Charles, it is true, &c. And after expressions of regard to his friends, told him he was at liberty. And they parted in good terms.

"In a day or two, Mr. Gordon went to the register, to see if now he might have a pass. His lordship told him, he could not now have it, without tabling the matter before the council, which his friends could not advise him to. And so he got off the best way he could, and came safe to his charge. This original Account I thought worth the reader's while, and from it we may guess what our circumstances would have been, had not the glorious Revolution intervened."

358. THE TRIAL OF THE SEVEN BISHOPS: being the Trial* of the Most Reverend Father in God, Dr. WILLIAM SANCROFT, Lord Archbishop of Canterbury, and of the Right Rev. Fathers in God, Dr. WILLIAM LLOYD, Lord Bishop of St. Asaph, Dr. FRANCIS TURNER, Lord Bishop of Ely, Dr. JOHN LAKE, Lord Bishop of Chichester, Dr. THOMAS KENN, Lord Bishop of Bath and Wells, Dr. THOMAS WHITE, Lord Bishop of Peterborough, and Sir JONATHAN TRELAWNEY, bt. Lord Bishop of Bristol, at the King's-Bench, for publishing a Libel: Trin. 4 JAMES II. A. D. 1688.

[The circumstances attending this most interesting Trial, and the characters and conduct of the reverend defendants, have been very copiously treated by Historians and Biographers. See in particular Burnet, the Biographia, and Birch's Life of Tillotson. The following short notices of these bishops are extracted from Granger :

“ Dr. Sancroft, who, according to bishop Burnet, made a much more considerable figure in his college, than in the chair of Canterbury, was promoted from the deanery of St. Paul's to that dignity, upon the demise of archbishop Sheldon. He had several good, but seems to have had few or no amiable qualities. His piety did not sit easy on him ; and his reservedness made his learning appear to be much less than it was in reality. He was slow, timid, and irresolute ; though he acted with firmness in refusing to read the declaration for liberty of conscience, and to take the new oaths enjoined at the revolution. He was placed at the head of the church, because he was like to do no great service to it. It was reasonably supposed, that a man of so recluse and speculative a turn, was very unlikely to disturb the court in their designs upon the religious liberties of the people. His deprivation was probably a matter of no great mortification to him ; as he had raised an estate in the see of Canterbury, which was more than sufficient for one of his retired disposition. Such is the character of this prelate, as drawn by a contemporary writer, who would have considerably softened the harshness of the features, if he had been more like Sancroft, who had a generous and enlarged heart to objects of benevolence. He was highly respected, and great deference was paid to his judgment by the prelates, his fellow-sufferers, in that difficult and dangerous conjuncture for the church, which preceded the revolution: his

conduct was indeed judicious and exemplary upon that trying occasion. He gave a thousand pounds towards rebuilding the deanery house of St. Paul's, and was very assiduous in procuring the coal act for rebuilding the cathedral. He bequeathed his valuable library, which he once intended to leave to his successors in the archbishopric, to Emmanuel College in Cambridge, where he received his education, and of which he had been master.* Some of his pieces will set his character, as a writer in a fair point of light. Such are, ‘ Modern Policies ;’ but such more particularly, his ‘ Familiar Letters to Mr. North ;’ both before, but ‘ principally after his deprivation and his retirement to the place of his nativity in Suffolk,’ Lond. 1757, an octavo pamphlet. See the Index to the State Letters of Henry, earl of Clarendon, sub voc. Canterbury.”

* “ After the archbishop had left Lambeth, and retired to a private house in town, Thomas, earl of Ailesbury, went thither to make him a visit. The prelate received him at the door of his apartment, which was opened by himself. The earl, struck with this circumstance of humiliation, and the total change of the scene in which he had frequently seen him at his palace, burst into tears. As soon as he recovered the power of speech, he told him how deeply he was affected with what he saw, and of his inability to suppress his grief. ‘ Oh, my good lord,’ replied the venerable confessor, ‘ rather rejoice with me ; for now I live again.’ This anecdote was communicated by John Loveday, esq. who had it from the earl himself.”

Granger.

“ [August 30, 1688. Medals of the bishops have been lately made, with this motto, Wisdom hath built her a house, and chosen her seven Pillars ; with the reverse, a church undermining by two Jesuits, with a pick-axe and shovel, and a hand pointing out of a cloud with this motto, The gates of Hell shall not prevail against it.” Narcissus Luttrell's MS. Brief Historical Relation, &c.]

* The Case of the Seven Bishops is reported in 3 Mod. 212.

“ William Lloyd,* bishop of St. Asaph, was son of Richard Lloyd, vicar of Sunning, and rector of Tilehurst in Berkshire. He was master of as much, and as well digested knowledge, as any clergyman of his time. Whatever he knew, he generally knew better than other men; and was better able to display it to advantage. He was never desultory in his studies, but always mastered one branch of science before he applied himself to another. His memory was prompt, his imagination lively, and his judgment exact. He seemed to be as great a proficient in philology, history, philosophy, and divinity, as if each of these had been the sole object of his application. He was a principal reformer of the language and method of sermons; and was an admirable master of the historic style. It is much to be regretted, that so excellent a pen should have been chiefly employed in subjects of controversy, the most perishable of all writings. He supplied a great part of the materials for Dr. Burnet's ‘History of the Reformation,’ and had a great hand in polishing that excellent work. His ‘Chronologia Universalis,’ in folio, which was the most laborious of all his performances, was partly printed, but never published.† It hath already been remarked, that his Index to bishop Wilkins's ‘Real Character’ is a master-piece in its kind. It should also be observed, that his various studies never broke in upon his parochial or episcopal duties, in which he was remarkably conscientious and exemplary. His prophecies, which were but his dotages, have been the subject of much ridicule. Ob. 30 Aug. 1717.

“ Francis Turner, was son of Dr. Thomas Turner, dean of Canterbury, by Margaret, daughter of sir Francis Windebank, principal

* Some curious particulars concerning his taking the oaths to king William and queen Mary are related in the Diary of Henry earl of Clarendon. After the Revolution, he became successively bishop of Litchfield and Coventry, and of Worcester. See in this Collection some proceedings against him (when bishop of Worcester) and his son, for interference in a Worcestershire Election, A. D. 1702.

“ There were two bishops of both names, contemporary with this prelate; one was successively bishop of Landaff, Peterborough, and Norwich; and the other of Killala and Achonry, in Ireland.” Granger.

† I shall mention it here, as a fact scarce known, that he was concerned in the magnificent work called by the name of ‘Pitt's Atlas;’ which, according to the proposals, was to be printed in eleven volumes in folio, at forty shillings a volume to the subscribers. I think only four were printed. This laborious and expensive work did not meet with encouragement.

secretary of state to Charles 1. He received his education at New College in Oxford, was some time chaplain to the king, when duke of York, and a residentiary of St. Paul's. In 1670, he was preferred to the mastership of St. John's College in Cambridge; in which preferment he succeeded Dr. Peter Gunning, and was himself succeeded by Dr. Humfrey Gower. He was afterwards preferred to the deanery of Windsor, which he held, together with the bishopric of Rochester. He was deprived for not taking the new oaths, 1 Feb. 1689-90. The next year he was accused of being a conspirator in a plot of nonjurors for restoring king James, for which some of that party were imprisoned; but he thought it prudent to abscond. A proclamation was soon after issued for apprehending him, Graham, and Penn, as traitors.—Dr. Turner was an affected writer, was author of ‘Animadversions on a Pamphlet, entitled, The Naked Truth;’ of several sermons; and ‘Letters to the Clergy of the Diocese of Ely.’ But the most remarkable of his pieces is his ‘Vindication of the late Archbishop Sancroft and his Brethren, the rest of the deprived bishops, from the reflections of Mr. Marshal, in his ‘Defence of our Constitution.’”

“ Thomas Kenn, a man respected in the court of Charles 2, for his unaffected piety, was some time chaplain to that prince, as he had been before to the princess of Orange.* The openness of his countenance corresponded with the simplicity of his character. His sermons and his other writings had a good effect, as they were well known to be the genuine effusions of his heart. Almost all his works have a tendency to promote practical religion. He lived after his deprivation, with lord Weymouth, at Longleat; where he spent the greatest part of his time in retirement, which he well knew how to enjoy. When he was afflicted with the colic, to which he was very subject, he frequently amused himself with writing verses. Hence some of his pious poems are entitled, ‘Anodynes, or the Alleviation of Pain.’

* “ While he was chaplain in the prince of Orange's court, he obliged one of his highness's favourites to perform his contract, by marrying a young lady of the princess's train, whom he had seduced by means of that contract. This gave great offence to the prince. But Charles 2, was not offended at his religious intrepidity, in peremptorily refusing to admit Nell Gwyn into his lodgings, when the court was at Winchester: on the contrary, he soon after made him a bishop. The king's good sense told him, though the prince of Orange's did not, that if a man is really a Christian, his conduct ought to be uniformly consistent with that character; and that principles of conscience are of too stubborn a nature to yield, even in courts, to modes of complaisance.” Granger.

There is a prosaic flatness in his heroic poem called 'Edmund;' but some of his hymns, and other compositions, have more of the spirit of poetry, and give us an idea of that devotion which animated the author. Ob. 19 March, 1710-11."

"Dr. John Lake, who for several years bore arms for Charles 1, in the civil war, was educated at St. John's College, in Cambridge.* He rose, by the usual gradations, to the bishopric of Man; to which he was nominated by William, earl of Derby, in 1682, and consecrated in December, the same year. He had not sat two years in this see, before he was removed to that of Bristol, whence he was translated to Chichester. Though he was imprisoned with the other bishops, for refusing to cause the declaration for liberty of conscience to be read in his diocese, he is said to have entertained very high notions of regal power; and to have 'declared upon his death-bed, 'that he had been educated in, and also 'taught others the great Doctrine of Passive 'Obedience; which he looked upon as the 'distinguishing character of the Church of 'England; and that he would not have 'taken the oath, though the penalty had 'been loss of life' Upon this declaration, a person of quality in the North, published 'A Letter concerning Bishop Lake's declaration of his dying in the Doctrine of Passive 'Obedience.' Ob. 30 August, 1689."

"Jonathan Trelawney was a younger son of sir Jonathan Trelawney, of Pelynt, in Cornwall. But his elder brother dying in 1680, he inherited the title of baronet. He was a man of polite manners, competent learning, and uncommon knowledge of the world. He was a true son and friend of the Church; and exerted himself with courage and alacrity, with magnanimity and address, in defence of her just rights and privileges. He was friendly and open, generous and charitable; was a good companion, and a good man. He was successively bishop of Bristol, Exeter, and Winchester. He had as much personal intrepidity as his predecessor in the last of these sees, and was, in all other respects, much his superior. The masterly dedication before Dr. Atterbury's sermons, is addressed to this prelate. The reader may see in it some traits of his character without the exaggerations which are too often found in compositions of this kind; and which bring the sincerity of authors in question, before we have read the first page of their works. Ob. July 19, 1721."

* Lake was not the only bishop of this time who had born arms. See in this Collection the Cases of Compton bishop of London, vol. 11, p. 1123, and of Magdalen College, p. 83, of this volume. His portrait is at that College.

White, bishop of Peterborough, on Feb. 1, 1690, was deprived for not taking the oaths to king William and queen Mary. Thus we see that of these seven objects of the persecution of king James, five were deprived for not taking the oaths to his successors. Dalrymple with his usual disregard to exactness, says (*Memoirs*, Part 2, Book 4, pp. 97, 98, 4to Ed.) that five of the six surviving prelates who had been sent to the Tower by king James, refused to take the oaths to the new government.

Of Compton, Granger gives the following account:

"Henry Compton, youngest son of Spencer Compton, earl of Northampton, who was killed in the civil war, was educated at Queen's College in Oxford. Having staid about three years at the university, he made the usual tour of Europe. After the restoration, he became a cornet in the royal regiment of guards, commanded by Aubrey de Vere, earl of Oxford: but a military life not suiting his disposition, he entered into holy orders, and was in a few years advanced to the bishopric of Oxford, and afterwards to that of London. He strongly expected to be promoted to the see of Canterbury; and was greatly disappointed when it was given to Dr. Sancroft, but more, when Dr. Tillotson was preferred to it. His learning was superficial, but his great diligence in discharging the duties of his function was truly exemplary. He is said to have been 'an humble, modest, generous, and good natured man; but weak, 'wilful, much in the power of others, and 'strangely wedded to a party.' He was emphatically called, The Protestant Bishop, for the noble stand he made in defence of the rights of the Church in this reign, when spirit and resolution were much more necessary than learning. He patronized converts from Popery, and was a generous friend to the French Protestants who fled hither from the persecution of Lewis 14. He appeared in arms at Nottingham, a little before the revolution, and declared his readiness to fight for the prince of Orange. He was a true son and brave champion of the Church, and a most munificent benefactor to it. Whatever imperfections there might be in his character, he was allowed to be much a gentleman, and no less a Christian. Ob. 7 July, 1713, Æt. 81."

"In Narcissus Luttrell's MS. Brief Historical Relation, I find the following entry early in December:

"1685. His majesty hath dismissed the bishop of London from the Privy Council, as also his Place of Dean of the Chapel Royal." He was succeeded by Crew.]

Friday, June 15, 1688.

Sir Robert Wright, Lord Chief Justice, Mr. Justice Holloway, Mr. Justice Powell, Mr. Justice Allybone,* Judges.

THIS being the first day of the term, his majesty's Attorney General (as soon as the court

* For characters of these judges, see lord Camden's judgment in Wilkes's Case, A. D. 1763, in this Collection. In the summer of 1688, king James gave the following

INSTRUCTIONS TO THE JUDGES ITINERANT.

"The judges of assizes of the circuits, both in England and Wales, are severally and respectively required by his majesty to take all occasions, both in their public and private discourses, but more especially in their respective charges, by all the pressing arguments that may be to persuade and require, That all his majesty's subjects of what degree, quality or condition soever (especially such as would be esteemed truly loyal and well affected to the government) should give their utmost assistance for the supporting of his majesty's late gracious Declaration for Liberty of Conscience.

"And to let them know, that his majesty intends very speedily to call a parliament, and to use his utmost endeavours that the same may be past into a law; that all his subjects may have that ease and safety, and consequently that plenty, which they now enjoy, continued to them and their posterities.

"The advancement of land, improvement of the trade and manufactures so greatly to the advantage of this kingdom, which are his majesties chiefest arms, being so visibly concerned herein; his majesty cannot doubt but such as desire the common good of this nation will give their utmost assistance to promote these great ends.

"You are to assure such as are of the Church of England, as well as others of his subjects, that his majesty will maintain all his gracious promises in the said Declaration.

"You are to encourage all people, of what persuasion soever, to live friendly together, as becomes good Christians and good subjects, and to dispose them to unite their endeavours to render effectual his majesty's gracious intentions for the common good and advantage of all.

"You are to remove, as much as may be, all fears and jealousies that are endeavoured to be insinuated by persons ill-affected to the government, by representing, that the experience they have now had for three years of the king's government sufficiently shews and ought to satisfy them, how gracious a prince he is, who only designs the universal happiness of his people, that trade may flourish and increase and the honour and reputation of the nation carried to a greater height than ever.

"And you are in order hereunto to contradict the idle and false reports that are industriously spread to distract men's minds, and

of King's-bench was sat) moved on the behalf of the king for a Habeas Corpus, returnable immediate, directed to the lieutenant of the Tower, to bring up his grace the lord archbishop of Canterbury, and the bishops of St. Asaph, Ely, Chichester, Bath and Wells, Peterborough, and Bristol; which was granted.

And with great dispatch, about eleven by

to disturb the public peace, as well as the common profit of the kingdom.

"You are to take all proper opportunities to inform such you converse with, That the liberty of conscience, his majesty hath been pleased to grant, has already most apparently increased our trade at home, and that the free exercise of religion has been the chief and principal visible cause of the great riches that some of our nearest neighbours abroad at this day enjoy, and would be a certain means to make these kingdoms populous, and by consequence to be the chiefest place of trade in the Christian world, which occasions so many malicious attempts to prevent it.

"You are to let all persons know, within your several districts: that his majesty is unalterably resolved to place trust and confidence in, and to reward all such of his subjects as shall zealously assist in his present measures, and to look upon all that shall oppose him herein as contemners of his royal will and pleasure, and enemies to the common good of his kingdom."

At the Croydon assizes, this Allybon gave the following charge:

Justice Allibon's Charge at the Assizes at Croydon.

"Gentlemen of the jury; It is a duty incumbent upon me upon this occasion, and at this time, to say something in order to your direction: And I am well satisfied with you, for I presume you are all gentlemen of worth, ability, loyalty and fidelity. Therefore, gentlemen, I will not tell you whatever you enjoy is from the good effects of government, and you may now keep up the good government of this county; for you are now to enquire into all misdemeanors heretofore, and past, that offenders may be met with, and justice done to all. I will only give you this to observe, That in Bills, &c. that come before you, your enquiry is not final, because the parties concerned have liberty to make their defence afterwards when they are brought upon their petty-jury, where they see their accusers face to face: And then on the other side, if you find that any thing proceeds from envy, and malice, and not of due prosecution, then you may acquit the person that is so wrongfully prosecuted, and so justice is done betwixt party and party; so an ignoramus jury may not be of use. [As to this see in this Collection, vol. 8. p. 359.]

"Gentlemen, it is the desire of the king, that we may keep in love and unity, and not to be devouring and harassing one another. We

o'clock the same day, the lieutenant returned his writ, and brought the said lord archbishop and bishops into court, where being set down in chairs, set for that purpose, Mr. Attorney General moved the court, viz.

Att. Gen. (sir Thomas Powis.) My Lord, I pray that the Writ and Retorn may be read,

have lived in an age where there is great debates and harassing about religion; I say, that we have been under great disputations about religion; and it is no wonder; for there is in religion as much variety as in mens' countenances; and now then you will not think it strange, because that you and I are not of the same religion, that we should be freed from disturbing and harassing one another. Gentlemen, be not mistaken, nor let no false rumour be spread in any place, that I am for taking off the penal laws and tests, but so as in their places to have good laws for your security. Gentlemen, the king himself desires you to make such laws as you will, only do it so as not to hang one another about religion; let no one be prosecuted for religion. If any one distributes such doctrine, he is a man that doth not know the king's intention, but calumniates him in the ——. The king is willing that every one may be as free in his conscience as in his thoughts: pray, Gentlemen, consider what a blessing this is, what a public interest and good it is of.

"First consider, the flourishing of our neighbours: Gentlemen, they have great trade and traffic, and gather riches: they have the protection of the government, and they are true and firm to that government they have their protection under. In a Christian kingdom it is not any one's interest to prosecute one another; then it is not his majesty's desire. Then gentlemen if we will act like free-born Englishmen, no government ought to be so horrible, and cruel as to prosecute one another for religion. Gentlemen, I'll urge it very little more with this instance: remember to do as you would be done by: this, Gentlemen, mankind and human nature tendeth to: but then if we come so far as to profess ourselves to be Christians, then let us consider what our great lawgiver, our blessed Lord and Saviour Jesus Christ said, 'Learn of me, for I am meek and lowly:' tenderness has no share of persecution: remember, I say, the true mark of Christianity is humility and mildness. Let me ask you from whence they have such a spirit, or what will be the consequence of it to posterity; what can be the meaning that any man shall be in love with sanguinary and bloody laws? I cannot conceive that any man that rightly lays his hand on his heart, I say, I cannot conceive he can give any reason. Gentlemen, no man that is a well grounded Christian can be for the laws of persecuting one another: I must confess that no man can get the reputation of a good Christian by putting sanguinary laws in execution. So, Gentlemen, though those sanguinary laws were enacted, and but some

which my lords the bishops are brought hither.

L. C. J. Read the Retorn.

Clerk reads the Retorn, which in English is as follows:

'I sir Edward Hales, baronet, lieutenant of the Tower of London, named in the writ to this schedule annext, To our most

years since, they never had a general approbation, nor no man of the Church of England for putting them in execution.

"Now, Gentlemen, as concerning the Test; if you consider that you will easily part with it. How many gentlemen of great worth to merit something of their fortune from the crown by their own industry, and are hindered because they cannot believe this, or that; there are 1,000 men brought up that cannot agree concerning Transubstantiation, what it is, or not, and concerning the Sacrament of the Lord's Supper; and because of this must they be hindered? why then because I cannot take the Test, must I be hindered of an employment in the world? this, Gentlemen, pincheth sore with them in liberal education. It is said, 'Upon this rock will I build my church:' was this meant of the Church of England? it was but of yesterday's standing: so, Gentlemen, it is but a flourish. Gentlemen, the end of the Test is not religion, but preferment: if any one therefore should be hindered upon just pretences for religion, then religion is not at the bottom of it. This, gentlemen, is a matter of great importance. It is in the catechism that Christ is really in the Lord's Supper; nor hath it been objected against the church of Rome by the church of England, that he was not really, but by way of presentation, and that is a great reproach; Christ himself told us he was there: now be you not more strict than Christ himself. I am not arguing what my sense is, but I am only shewing that as the church of England would impose, that Christ was by way of presentation, is it not equally difficult, that we shall believe thus and thus? Is not the like liberty to be had and taken of one side, as well as the other? Gentlemen, I only argue this for the incoherence of the thing.

"Gentlemen, there is another thing to be observed: our lawful superiors must be obeyed in all their lawful commands: this the church of England-men have made their business to preach up. The king is to be obeyed in every thing, if it be not against God's command. The Test is not commanded by the word of God, and the taking away not prohibited. Gentlemen, I hope your solid judgments, and great prudence will supply you with better arguments, and discourses than I shall give you; and whoever is not for love and meekness, never let him challenge to himself to be a good subject, that is not for the taking off the penal laws and Test.

"Gentlemen, I have one thing more to commit to your consideration about the late transaction of the bishops, that were tried lately at the King's-bench: I would not have the world

' serene lord the king, do most humbly certify,
' That before the coming of the said writ, to
' wit, the eighth day of June, in the fourth
' year of the reign of our lord James the second,

mistaken: it was not for their religion they were tried: they were tried for acting against the government; for publishing a libel that tended to sedition: the king commands them with the advice of his council for to publish his declaration; they would not do it. If the king had been Turk or Jew, it had been all one; for the subject ought to obey. Gentlemen, it may be the method of their proceeding may stick with persons: some will say, may not a subject petition? now, gentlemen, it is not the name of a petition can justify an unlawful act; nay, gentlemen, it may be the worse and deserve a greater reproof. I do believe of all subjects that have lived under the face of the sun none have the like liberty, as we have under our king; for I may be bold to say, that any one may come to the speech of his majesty, or to petition him; but then, gentlemen, consider what a petition it is, and for what it is; about what the king doth in his government? any man may petition in his private affairs to his majesty; but what have we to do to petition about government? for that which is so, it is a libel, and of bad consequence: so I shall say no more; I hope you are dutiful subjects, and gentlemen of great prudence and worth, and have had no ill principles distilled into you, and so the Lord direct you." From Papers in the handwriting of archbishop Sancroft among Tanner's MSS. in the Bodleian Library at Oxford. See Gutch's *Collectanea Curiosa*.

The following passages from the Diary of Henry earl of Clarendon, relate to the origin and progress of the proceedings against the Seven Bishops:

" May 12, 1688, Saturday. I dined at Lambeth; where likewise dined the bishops of London, Ely, and Peterborough, Chester and St. Davids. The two last discomposed the company, nobody caring to speak before them. Quickly after dinner they went away: then the archbishop and the rest took into consideration the reading of the declaration in the churches, according to the order of council: and, after full deliberation, it was resolved not to do it. Dr. Tension was present at all the debate. The resolution was, to petition the king in the matter; but first to get as many bishops to town as were within reach: and, in order thereunto, that the bishops of Winchester, Norwich, Gloucester, St. Asaph, Bath and Wells, Bristol and Chichester should be written to, to come to town.

" May 16, Wednesday. The bishop of St. Asaph came to town before noon: he alighted at my house, and dined with me. I sent for the bishop of Ely, who quickly came. In the afternoon they two went to Lambeth; in the evening they came back again: for the bishop

' king of England, &c. William lord archbishop
' of Canterbury, William lord bishop of St.
' Asaph, Francis lord bishop of Ely, John lord
' bishop of Chichester, Thomas lord bishop of

of St. Asaph lay at my house. They told me, most of the city clergy had resolved not to read the declaration. The bishop of Winton sent his excuse to the archbishop, that he could not come to town, being indisposed in his health."

" May 18, Friday. In the evening the bishops, six in number, presented a petition to the king, praying, that his majesty would recall his proclamation for reading the proclamation of indulgence in the churches. It was written with the archbishop's own hand, and signed by himself and the other six. The king took them into the room within the bed-chamber: when he had read the petition, he was angry, and said he did not expect such a petition from them. This the bishop of St. Asaph told me, when he came home.

" May 19, Saturday. In the morning all the judges were sent for to Whitehall: the report was that it was about the bishops' petition.

" May 20, Sunday. I was at St. James's church: in the evening I had an account that the declaration was read only in four churches in the city and liberties. Neither Stillingfleet nor Tillotson were at their churches; but, as I am told, went yesterday to their country houses. So otherwise are some sort of men."

" May 23. My Lord [Chancellor] told me the king had been informed that was at Lambeth, at the consultation among the bishops."

" May 28. In the afternoon the bishop of Ely was with me: he told me that my lord Sunderland had sent a summons under his hand and seal to the archbishop; requiring him, and the rest of the bishops who had signed the petition, to appear before the king in council on the 8th of June, to answer to such matters of misdemeanours, as shall be then objected against them."

" June 5. In the evening the bishops of Ely, and Bath and Wells were with me: I advised them to consult with the best lawyers, how to behave themselves at the council board; that the time drew near, and that they should not come unprepared to answer any question that might be asked them upon their petition.

" June 6. In the evening the bishops of Ely, Bath and Wells, Peterborough, and St. Asaph, (the last was just come to town) were with me, and desired to borrow some parliament journals, which they thought might be useful to them, and which I lent them.

" June 7. In the evening the bishops were with me, and told me they had taken advice with the best counsel, and hoped they should have good success to morrow. I asked them, if they had well considered what to do or say, in case they should be required to find bail for their further appearance (for such a thing was

' Bath and Wells, Thomas lord bishop of Peterborough, and Jonathan lord bishop of Bristol, mentioned in the aforesaid writ, were committed and delivered to, and are retained

whispered); and I found they had not: whereupon I earnestly pressed them to go this very evening and advise therein with sir Robert Sawyer, who could best instruct them what power the council board now had; and so they left me, resolving to go presently to him.

" June 8. In the afternoon, the archbishop and the rest appeared at council. When they were first called in, the petition was shewed them, and they were asked if they owned that petition? The archbishop answered, that the king very well knew what petition was delivered to him, and that it could not be expected they should accuse themselves: upon which they were ordered to withdraw. After a little debate they were called in, and bid withdraw again twice or thrice. What past at each time, I cannot yet particularly learn: but at last they were required to enter into recognizances to appear in the court of king's bench the first day of next term, which they refused to do, and thereupon were committed to the Tower; and the attorney general was ordered to prefer an information against them.

" June 9. Multitudes of people went to the Tower to the Bishops.

" June 10. I kissed his [the king's] hand, and wished him joy [of the birth of the prince of Wales.] I visited the bishops in the Tower; with whom was a vast concourse of people going in and out.

" June 12. In the afternoon I went to the Tower. They told me lord Halifax had been to see them, and advised them to write every one to three peers to be bail for them, when they came to the King's-bench; which, they said, they did not like, and seemed not inclined to do it. I confess I do not understand his lordship's notions; I am sure when the reading the declaration was under consideration, and the petition, for which the bishops now suffer, he was so very cautious, that he would give no advice at all. I told the bishops, that, in my opinion, the best thing they could do, was without any noise, to send to some of their friends (without regarding whether they were peers or not) to be at Westminster the first day of the term in case there should be occasion for them."

" June 14, 1688. In the morning I went to see my lord chancellor, he discoursed very freely to me concerning the bishops, said he was much troubled at their prosecution, and made many professions of service for them, which he desired me to let them know. He said the king was once resolved to let the business fall and not to have proceeded thus against them, that he was grieved to find he had changed his mind, that he knew not how it came to pass; but said there was no remedy, some men would hurry the king to his destruction. In the afternoon I went to the Tower

in my custody, by virtue of a certain warrant under the hands and seals of George lord Jeffries, baron of Wern, lord high chancellor of England, Robert earl of Sunderland, lord pre-

and gave the bishops an account of all that my lord chancellor had said to me.

" June 15. The first day of the term at the first sitting of the court of King's-bench, the attorney general moved for a Habeas Corpus, returnable immediately to bring the bishops into court. About half an hour after eleven they came; both the hall and palace yard were extremely crowded. All the way as they came from the bridge where they landed, to the very court, the people made a lane for them and begged their blessings. As I was taking coach in the little palace yard by the House of Lords, I found the bishop of St. Asaph in the midst of the crowd, the people thinking it a blessing to kiss any of those bishops hands or garments. I took him into my coach and carried him home to my house, but was fain to turn up through Tuttle-street, and so to go round by the park to avoid the throng the other way in the streets, which neither the bishop nor I cared to be in.

" June 21. I was told that this morning the chancellor had carried sir Samuel Astry to the king. It was presently suspected to be about the bishops' trial; he being the person that is to strike the jury.

" June 25. In the evening the bishop of St. Asaph, Ely, Bath and Wells, and Peterborough were with me. They told me their jury was settled this afternoon. I was told sir Robert Clarke had been very busy at sir Samuel Astry's in that matter."

" June 27. In the afternoon I was with my lord chancellor. He talked very freely to me, and with great trouble upon the bishops' affair. He seemed very apprehensive that their being brought to a public trial would be of very ill consequence to the king, in all his affairs: but he said it would be found, that he had done the part of an honest man. As for the judges, said he, they are most of them rogues.

" June 28. The bishops told me they had settled every thing with their council for their trial, lord Dartmouth had been with the bishop of Ely to persuade him to make application to the king, which got air, and was like to have been very inconvenient, had not the bishop been very steady.

" June 29. The bishops were brought to their trial, which lasted from nine in the morning till past six in the evening. There were five or six and twenty noblemen all the time in the court. When the jury withdrew, the court adjourned till to morrow morning ten o'clock: the bishop of St. Asaph, sir Thomas Clarges and Dr. Tennison supped with me. Mr. Blaney was in court to take the trial.

" June 30. Westminster-hall was extremely full again. The jury (sir Roger Langley foreman) brought in their verdict, Not Guilty: upon which there was a most wonderful shout, that one would have thought the hall had crack-

'sident of the privy council of our lord the king, Henry lord Arundel of Warden, keeper of the privy seal of our said lord the king, William marquess of Powis, John earl of

Mulgrave, lord great chamberlain of England, Theophilus earl of Huntingdon, Henry earl of Peterborough, William earl of Craven, Alexander earl of Murray, Charles earl of

ed; insomuch that the court took notice of it. In the evening multitudes of bonfires were made for the bishops being acquitted."

"July 5. In the morning I was with my lord chancellor: he told me, he found the king a little troubled, that the bishops had been brought to their trials; that he seemed to be in a milder temper than he had been, and he hoped he might be persuaded to take moderate counsels. Now, says my lord, honest men both lords and others (though the king had used them hardly) should appear often at court. I am sure, it would do good. He desired I would come sometimes to him, that by me he might have a correspondence with the archbishop; which it was yet too soon for him to have openly.

"August 13. I was at Bulstrode [the residence of Jefferies.] When I was going away my lord chancellor would needs carry me as far as Dr. Hickman's living. I went in his calash with him. He talked very freely to me of all affairs; called the judges a thousand fools, and knaves; that chief justice Wright was a beast: he said the king and queen were to dine with him on Thursday next; that he had still great hopes the king would be moderate, when the parliament met. When we came to Dr. Hickman's, my lord was inclined to be merry; saying he had papists and spies among his own servants, and therefore must be cautious at home."

This lord Clarendon (see more of him in Crone's Case, A. D. 1690) appears to have had a lively feeling of religion, and to have been upon the whole a worthy and conscientious man.* His attachment to the church of Eng-

* The collation of the following passages in his Diary may perhaps excite a smile:

"Nov. 15. Just after dinner Mr. Dent came to Lambeth to me from my wife, to let me know that news was come to town, that my son was gone over to the prince of Orange with his own regiment, the earl of Oxford's regiment of horse, and the duke of St. Alban's regiment. I presently went over the water to my brother's, who confirmed this sad news to me. O God, that my son should be a rebel! the Lord in his mercy look upon me, and enable me to support myself under this most grievous calamity. I made haste home; and, as soon as I could recollect myself a little, I wrote to my lord Middleton to obtain leave for me to throw myself at the king's feet.

"Nov. 30. Before dinner sir H. Capell was with me. I told him, now the writs were issued for a parliament, and that a proclamation was coming forth to allow all men to go to the countries, I resolved to go to Sarum, and so to the prince of Orange; and that I would begin

land appears to have been strong, and he is not sparing of asperity of expression towards those whom he denominates fanatics. But neither is he on all occasions destitute of indulgent language towards those whose religious opinions differed from his own.

In a letter, written by him (Sept. 4th, 1686,) while lord lieutenant of Ireland, to his brother lord Rochester, he says, "By my consent any man though a Jew who will bring money and live obediently to the laws shall be welcome, and have all the encouragement and protection the government can give him." And, on the 9th of the same month, he writes to the king, "nor have I presumed to recommend any to your majesty's favour since I came hither but those who have always served you, and I think they have been all Roman Catholics." Of his unwillingness to suffer James's Popish inclinations to be offended under his government, he gave early proof in a letter dated March 2d, 1685-6, before he had been in Ireland two months, he informs the king, "Very lately a young man preaching before me was indeed very impertinent: not so much in relation to your majesty, as in taking notice of the king of France's proceedings towards the Huguenots: though I know your majesty does not approve of those proceedings, yet what has any preacher to do to inquire into the actions of any prince, thought not his own? I therefore sent for him the next morning, and gave him a rebuke. I trouble your majesty with this story, to shew you that no care of mine shall be wanting to hinder all things that I think will displease you; but especially those things, in which I know your mind, as I do in this concerning the preaching. And I beseech your majesty to believe, that no man shall commit these follies twice before me; nor any where else, which I have information of: and though the inferior clergy in most places are unruly, and not so apt to take advice, as to give it; yet I dare undertake to keep ours here, within the bounds of duty and good manners."

In the preceding extracts from Lord Clarendon we find Jefferies hoping that James might be persuaded to take more moderate counsels; while the friends of James have endeavoured to palliate his guilt by imputing his misconduct to the advice of Jefferies. The same recrimination occurred respecting the cruelties in the

my journey to morrow. He said, he would go with me; and desired me to take him up at Brentford, as I went by. Lord Drogheda, and lord Blessington being with me in the afternoon, I told them of my journey: they both said, they would go with me.

"Dec. 1. About eight in the morning I set out from Jermin-street."

' Middleton, John earl of Melfort, Roger earl
' of Castlemain, Richard viscount Preston,
' George lord Dartmouth, Sidney lord Godol-
' phin, Henry lord Dover, sir John Ernle,

west [See vol. 11, p. 302.] The letter from Price inserted below, and the passages which precede it, are extracted from what Macpherson has thought fit to entitle "The Life of James the Second, written by himself." See vol. 6, pp. 297, et seq.

"The Declaration for liberty of conscience ordered to be reprinted; and to be read in the churches. The bishops address against it; thinking it illegal to dispense with all sorts of laws in cases contrary to the very designs of the law.

"The bishops petition on the 18th of May, against what they were to read on the 20th. The Chancellor advised the king to summon the bishops before the council, on the 9th of June, for a tumultuary petition, liable to a legal prosecution. They, refusing bail, were committed to the Tower. The queen expected to lye-in; and did the next day. The princess Anne contrived to go to Bath, in order to be absent when the queen was brought to-bed. The bishops, perhaps, had some motive in forcing the king to imprison them: for he would not only have taken their recognizance, but even their word, for their appearance. Both were refused; because an imprisonment would inflame the nation, and prevent the archbishop of Canterbury from being at the queen's delivery. The king had earnestly pressed the princess Anne to stay, till the queen should be delivered; but the doctor's opinion pleaded all delays dangerous. The prince was born on the 10th of June. The prince of Orange sent Mr. Keppel to congratulate the king and queen, and prayed for the prince, who had like to have died for want of a wet-nurse to suckle him.

"On the 29th of June, the bishops were tried. The Presbyterians joined with the church party to expose the king.

"In the case of the bishops there is no doubt but the king had done better, in not forcing some wheels, when he found the whole machine stop. But it was his misfortune to give too much ear to the pernicious advice of those who put him upon such dangerous councils with intent to widen the breach between him and his subjects. But his prepossession against the yielding temper, which had proved so dangerous to his brother, and fatal to the king his father, fixed him in a contrary method. He had always preached against the wavering councils of his brother; and seeing that other bishops made not the same difficulty, and since many complied, he thought the rest ought to do the same. The king, therefore, gave more easily into the Chancellor's opinion, who thought that a mere reprimand was not sufficient. It was, however a fatal council: for besides the common reasons against it, nothing ought to have made the king more cautious, in the matter, than the present conjuncture, on

' knight, chancellor of the exchequer of our
' said lord the king, sir Edward Herbert,
' knight, chief justice of the common bench of
' our lord the king, and sir Nicholas Butler;

account of the queen's being with child. It was that gave the alarm: and by consequence, required a greater attention, to avoid every cause of complaint."

"Mr. Robert Price,* to the Duke of Beaufort.
—An Account of the Trial of the seven Bishops.

"Sir, *Lincoln's Inn, June 30, 1688.*

"Yesterday, being St. Peter's day, the seven Bishops were brought to their trial, upon the information of publishing a libel, about their refusal to read, or to cause to be read, the king's declaration. Their trial held from nine in the morning, till near seven in the evening. The king's evidence to the number of twelve, laboured to prove the Bishops' hands to the petition; which was done obscurely. Lord Sunderland was sent for, to prove the publication of the libel. His evidence was, that, at the request of the Bishops, he brought them to the king, to whom they delivered a paper; but could not say that it was the same for which the information was there exhibited. The council for the Bishops insisted upon their not proving, that the Bishops wrote these hands; next, that not publishing was proved; and if so, that it was no libel. There Pollexfen and Mr. Finch took no small pains to inveigh against the king's dispensing power. Serjeant Pemberton said, that what the Bishops did, was that which became them as peers; and, if the dispensing power was against law, how came they to be criminals, for not doing that which was against law? and said farther, that he could shew several judgments in parliament, and in cases in law, where the dispensing power was denied. The council for the king waived the point, though Mr. Solicitor was fiercely earnest against the Bishops, and took the management upon himself; Mr. Attorney's province being to put in a smooth question now and then. Mr. Justice Powell declared himself very freely, that he could not find the petition to be a libel; for then it must be false, scandalous and malicious. False it was not; because he took the law to be, that the king had not a dispensing power; for, if he had,

* "Price was afterwards one of the barons of Exchequer. He rendered himself remarkable by a spirited speech in the House of Commons, in the year 1696, against some grants of the demesnes of the prince of Wales, made by king William to his favorite, the earl of Portland. Many of his original letters to the duke of Beaufort are in the hands of the editor." Macpherson.

See in this Collection, A. D. 1717, Mr. Baron Price's Argument concerning the king's prerogative in respect to the education and management of the Royal Family.

‘ knight, lords of his majesty’s most honour-
‘ able privy council, to me directed : The tenor
‘ of which warrant follows in these words, viz.’

“ These are, in his majesty’s name, and by
“ his command, to require you to take into your
“ custody the persons of William lord arch-
“ bishop of Canterbury, William lord bishop
“ of St. Asaph, Francis lord bishop of
“ Ely, John lord bishop of Chichester, Tho-
“ mas lord bishop of Bath and Wells, Tho-
“ mas lord bishop of Peterborough, and Jo-
“ nathan lord bishop of Bristol, for contriving,
“ making and publishing a seditious libel in
“ writing, against his majesty and his govern-
“ ment, and them safely to keep in your cus-

most part of the statute books might be dis-
pensed with, and there would be no need of
parliaments. Scandalous or malicious it was
not ; because drawn with all privacy, and pre-
sented with all humility. Mr. Justice Hollo-
way had a mind to say somewhat to the pur-
pose ; but did declare against the dispensing
power. The chief justice doubted, as to the
proof of the publishing ; but took the petition
to be a libel. Justice Allybon believed through-
out, and doubted nothing. The jury withdrew.
The hall being full, and the Palace Yard, they
made three huzzas that were heard at the
Temple. The jury staid till nine this morning,
Arnold a brewer till then dissenting, when they
brought in the Bishops Not Guilty ; which was
followed with so many shouts in the hall, that
it was with much difficulty they could be qui-
eted. This is the result of the long expected
cause. The court of King’s Bench was yes-
terday and to day very full of the nobility and
gentry of the best quality. I doubt this day’s
work will give Justice Powell a remove ; and
it is thought, Holloway also ; there being can-
didates enough for the vacancies. Mr. Ser-
jeant Lehunt had his train carried through
Westminster Hall, which is not usual ; but
whether ominous of promotion, I know not.
It is, however, a plain demonstration of his
train-bearer’s ignorance.”

Mr. Williams Wynn has permitted me to
compare this Report of the case of the Seven
Bishops with a Report in MS. which belonged
to sir William Williams the Solicitor General
at the time of their trial. This MS. contains
many alterations of sir William Williams’s
speeches (in several instances softening down
his expressions. Burnet says, ‘ Powis acted
his part in this Trial as fairly as his post could
admit of, but Williams took very indecent li-
berties’); some of which are noted in the Report
here given, and some are incorporated into it.
And on the first leaf of the MS. is written by
sir Wm. Williams the following memorandum :

‘ I am against printing or publishing this
‘ sort of Narrative of the proceedings in the
‘ late case of my lord archbishop and bishops
‘ and do hereby disclaime the printing or pub-
‘ lishing of it.’ W. WILLIAMS.

Witness James Evans, January 8, 1688.

“ tody until they shall be delivered by due
“ course of law ; for which this shall be your
“ sufficient warrant. At the council chamber
“ in Whitehall, this 8th day of June, 1688.

“ To the Lieutenant of the Tower
“ of London.”

“ And this is the cause of the taking and de-
“ taining, &c.”

L. C. J. Well, what do you desire, Mr.
Attorney ?

Mr. Att. Gen. We pray for the king, that
the retorn may be filed.

L. C. J. Let it be filed.

Att. Gen. By this retorn your lordship ob-
serves what it is my lords the bishops were
committed to the Tower for ; it is by warrant
from the council board, where, when their
lordships appeared, they were not pleased to
give their recognizances to appear here, as they
were required by the king to do : and there-
upon they were committed to the Tower, and
now come before the court upon this retorn
of the king’s writ of Habeas Corpus ; and by
the retorn it does appear, it was for contriving,
writing, framing, and publishing a seditious
libel against his majesty and the government.
My lord, it is our duty, who are the king’s
counsel, pursuant to our orders, to prosecute
such kind of offences : and when the proper
time shall come for us to open the nature of the
offence, your lordships will then judge what
reason there is for this prosecution : but in the
mean time, what we are now to offer to your
lordship is, The officer of this court has an
information against his grace the archbishop
of Canterbury, and the rest of my lords the
bishops, which we desire may be read to them,
and pray that they may plead to it, according
to the course of the court.

Sir Robert Sawyer.* If it please your lord-
ship to spare us a word for my lords the
bishops.

Att. Gen. My lord, we pray for the king
the information may be read.

Sir R. Sawyer. We desire to be heard a
word first.

Sol. Gen. (sir William Williams). We oppose
your speaking any thing, till the information
hath been read.

Sir R. Sawyer. But what we have to offer is
proper before it be read.

Att. Gen. Your time is not yet come, sir
Robert.

Sir R. Sawyer. Yes, this is our proper time
for what we have to say, and therefore we
move it now, before there be any other pro-
ceedings in this matter.

Sol. Gen. It is irregular to move any thing
yet : pray let the information be read first.

Serj. Pemberton. If your lordship please to
spare us, we will offer nothing but what is fit
for us to do.

* See in this Collection some account of him,
vol. 10, p. 117. See also sir William Williams’s
Case, *infra*.

Sir R. Sawyer. And now is our proper time for it.

Sol. Gen. Gentlemen, You do know the way of proceeding in such cases better than so : I am sure, as for you, sir Robert Sawyer, you have often opposed any such motion as irregular : and I hope the case is not altered ; however you may be, the course of the court is the same.

Sir R. Sawyer. With submission, if your lordship please to spare me a word, that which I would move, is, to discharge my lords the bishops upon this return, and from their commitment upon this warrant.

Att. Gen. Surely these gentlemen think to have a liberty above all other people : Here is an Information, which we pray my lords the bishops may hear read, and plead to.

Sol. Gen. Certainly, sir Robert Sawyer, you would not have done thus half a year ago.

Sir R. Sawyer. What would not I have done ? I move regularly (with submission) to discharge my lords the bishops from their commitment ; if they are not here legally imprisoned, now they are before your lordships upon this writ, then you will give us leave to move for their discharge, before any thing else be said to them ; and that is it we have to say, to demand the judgment of the court upon this return, whether we are legally imprisoned ?

Att. Gen. Under favour, my lord, neither the court, nor they, are ripe for any motion of this nature yet.

Serj. Pemberton. If we do not move it now, it will afterwards (I fear) be too late.

Sol. Gen. These gentlemen are very forward, but certainly they mistake their time ; this is a Habeas Corpus that is brought by the king, and not by the prisoners ; and therefore they are too soon, till they see what the king has to say to them.*

Att. Gen. Your lordship cannot as yet be moved for your judgment about the legality of this commitment, because this writ was granted upon our motion, who are of counsel for the king, and upon this writ they are brought here : And what is it we desire for the king ? Certainly nothing but what is regular. We have here an information for the king against my lords, and we desire they may plead to it.

Serj. Pemberton. Good my lord, will you please to hear us a little to this matter.

L. C. J. Brother Pemberton, we will not refuse to hear you by no means, when you speak in your proper time, but it is not so now ; for the king is pleased, by his Attorney and Solicitor, to charge these noble persons, my lords the bishops, with an information ; and the

king's counsel call to have that information read, but you will not permit it to be read.

Serj. Pemberton. Pray, my lord, spare us a word : If we are not here as prisoners regularly before your lordship, and are not brought in by the due process of the court, then certainly the king's counsel, or the court, have no power to charge us with an information ; therefore we beg that you will hear us to that, in the first place, whether we are legally here before you.

Sol. Gen. These gentlemen will have their proper time for such a motion hereafter.

Mr. Pollexfen.* No, Mr. Solicitor, this is, without all question, our only time for it ; we shall have no time afterwards.

Att. Gen. Yes, you will, for what do we, who are of counsel for the king, now ask of the court, but that this Information may be read ? When that is done, if we move to have my lords the bishops plead, then they may move what they will ; but before we make that motion, they cannot break in upon us with their motion ; and, with submission to your lordship, whether my lords the bishops were duly committed, is not yet a question.

Mr. Finch. But it is, and this is the fittest time for it.

Sol. Gen. Pray will you hear us quietly what we have to say, and then answer us with reason, if you can : I think we are in a proper way, but they are not, my lord ; for (as I said) my lords the bishops are brought by the king's writ upon our motion for the king, not upon theirs ; and now we have them here before the

* The following very curious passage respecting Pollexfen occurs in the Diary of Henry earl of Clarendon :

"1688, Dec. 14," [King James had secretly withdrawn from Whitehall on the 11th and had been detained at Feversham.] "My brother gave me an account of the manner of the king's being taken ; and that the peers, who met every morning and afternoon in the council chamber at Whitehall, had sent to him, as soon as they heard of it. I sent Mr. Knight, to desire Mr. Pollexfen to come to me tomorrow morning, as early as he could."

"Dec. 15. Saturday. In the morning Mr. Pollexfen was with me. I told him, I had a great desire to confer with him, that I might the better know how to govern myself in this wonderful exigence. He very readily told me, he wondered, the prince of Orange had done no more ; that the king by withdrawing himself had left the government ; that he had made a cession, and forfeited his right ; that his being now at Feversham, though he should come back to London, signified not a rush ; that the prince of Orange had nothing to do, but in the head of his army to declare himself king, and presently to issue out writs for the calling a parliament according to Cromwell's model ; which he said was a far more equal way of election than the old constitution. Good God bless me ! what a man is this ? I confess he astonished me ; and so we quickly parted."

* In sir William Williams's MS. corrections, this speech is thus given :

"These gentlemen are very forward, but certainly they mistake their time. This is a Habeas Corpus that's brought by the king and not by the prisoners, and therefore they ought to hear what the king shall say to them by his information before they make their objections."

court, we for the king will charge them with an information; which information, that they and the court may know what it is they are charged with, we pray it may be read to them by the clerk; and when it is read, let these gentlemen say what they will for them, they shall have their time to speak; but certainly they ought not to obstruct the king's proceedings, nor oppose the reading of the information to these noble lords who are brought here in custody into court, to this very purpose, that they may be charged with this information.

Serj. *Pemberton*. But we have somewhat to say before you can come to that, Mr. Solicitor.

Sol. Gen. You ought not to be heard as yet.

Serj. *Pemberton*. Under favour, we ought to be heard.

Sir R. *Sawyer*. My lord, Mr. Solicitor has opposed our being heard, but we now desire he would hear our answer to it; and that which we have to say, is this, That my lords the bishops are not here regularly in the court to be charged with an information; and if the law be not with us in that point, as we doubt not to make appear it is, no question but when your lordship has heard what we have to say, you will give a right rule in it. My lord, we say, that by the rules of law, no man ought to be charged with an information or indictment, by the express statute of Edward the 3d, unless he come into the court by legal process: That is a standing rule, and the practice of this and all other courts is pursuant to it. Now in this court you have several processes that go out of this court, and he that comes as taken by virtue of a *Capias*, or an attachment after a summons, or by *Venire* in the nature of a *Subpoena*; I say he that comes in upon these processes, may be charged with an information: but where a person is in prison, committed by another jurisdiction, and another authority than that of this court; when the prisoner is brought here by *Habeas Corpus*, the first thing the court has to do, is to enquire whether he be legally committed; to that end the return is filed, and the party has leave to make his exceptions to it, as we do in this case, my lords are brought here upon a *Habeas Corpus*, the return of which has been read, and now the return is filed, we are proper to move, that my lords may be discharged; for you now see what they are committed for; it is for a misdemeanor in making and publishing a libel, that is the matter for which they are committed; and it appears by the return likewise, that they who are thus committed are peers of the realm; for so my lords the bishops all are, and for a misdemeanor they ought not by law to have been committed.

L. C. J. You go too far now, sir Robert Sawyer; I would willingly hear you whatsoever you have to say; but then it must be in its due time.

Att. Gen. This very discourse (indeed I have heard) has passed up and down the town for law; we see now whence they had it.

Sol. Gen. I know it has heretofore been

urged by me, but denied by them who now urge it,* and I am glad that they now learn of me to tack about.

L. C. J. Look you, gentlemen, do not fall upon one another, but keep to the matter before you.

Serj. *Pemberton*. So we would, my lord, if the king's counsel would let us. First, we say, we being brought here upon a return of a *Habeas Corpus*, there was neither at the time of the commitment cause to imprison us, nor was there by the warrant any cause to detain us in prison; and for that, besides what has been hinted at, we say further, that here it is returned, that we were committed by such and such persons, lords of the privy-council; but the return doth not say, that it was done by them, as lords of the privy-council, which must be in council; for if it be not in council, they have not power to make such a warrant for the commitment of any person; and that we stand upon. Here is a return that is not a good return of a legal commitment, and therefore we pray my lords may be discharged.

Mr. *Pollexfen*. Pray, my lord, spare me a word: that is the thing we humbly offer to your lordships' consideration; and, under favour, I think we are proper both as to the matter, and as to the time: the return is now filed before you; if by this return there appears to have been such a cause to commit these lords to prison, as is legal, then we acknowledge they may in a legal course be brought to answer for their offence; but with submission, it appears not by any thing that is in this return, that my lords the bishops were committed by the order of the privy-council. All that is said, is, that they were committed by my lord chancellor, and those other persons, named lords of the privy-council; which we conceive is not a good return; for they can do nothing as lords of the privy-council, except only as they are in council, and by order made in council; except that do appear, they have no power to commit: then take the case to be so; here is a man committed by one that has no authority to commit him, and he is brought by *Habeas Corpus* into this court, what shall the court do with him? Shall they charge him with an information? No, it does appear that he was in custody, but under a commitment by those who had no legal power to commit him; and therefore he must be discharged; and that we pray for my lords the bishops. What the king's counsel may have to say to them afterwards, by way of information or otherwise, they must take the regular methods of the law to bring my lords the bishops to answer; but as the case stands here before you, upon this return, it does appear, they had no authority to commit them by whose warrant they were committed; and therefore this court has nothing to do but to discharge them.

* In sir William Williams's MS. the remaining words of this speech are cancelled.

Mr. *Finch*. I beg your lordship's leave to say one word farther on the same side: I think, with humble submission, this is the most proper time for us to make this motion; for here is a Habeas Corpus returned; this return is filed, and then the king's counsel move to charge my lords the bishops with an information. That motion of theirs (we say) is too soon, unless my lords are here in court, I mean legally in court; for no man is in court so as to be liable to be charged with an indictment, or information, that is not brought into court by legal process, or as a prisoner upon a legal commitment: then, my lord, with humble submission, we say, that it doth appear by this return, that my lords the bishops are not here legally in court, because this commitment of theirs was not a legal commitment; and two objections we have to it, the one is, that the persons committing had no authority to commit; for the return says, that it was by virtue of a warrant under the hands of such and such, being lords of the council, and they (we say) have no authority to do this. The other objection is, that the fact for which they were committed, they ought not to have been imprisoned for: the fact charged upon them is in the nature of a bare misdemeanour, and for such a fact it is the right of my lords the bishops (as peers of the realm) that they ought to be served with the usual process of Subpœna, and not to be committed to prison. These are the two objections that we have to this return, and this is, under favour, the proper time for us to make this objection, before the king's counsel can charge my lords the bishops with an information.

L. C. J. What say you to it, Mr. Attorney?

Att. Gen. With submission, my lord, these gentlemen have, out of course, and preposterously, let themselves into this discourse; and, when all is done, we must recur to that which we moved to your lordship before, to desire that your lordship would order the information to be read; and when we call my lords to plead to the information, then will be their proper time to make this objection; for 'tis a strange thing, certainly, for men to make objections before they know what it is they are charged with! They say, the ground of their motion is, because my lords the bishops are here in court upon the return of an Habeas Corpus; and therefore they come in upon a commitment (as they say) for that which they ought not to be committed for at all, and we cannot charge them, unless they be properly in court. Now for that, it is true, if that commitment of theirs were the only thing that was here before the court, then the court would, if that commitment were illegal, discharge them of that; but when a man is present here in court, brought into court, let him come how he will, he is not to have any longer time than that instant to appear to, and be charged with, the information. 'Tis true, upon a Subpœna, which is in the nature of a summons, there a man hath, as it were, an essoin, and may

make his excuse, and he shall have time; but when he is present in court, either as a person privileged, as an officer, or as a prisoner, he shall be charged presently; and these gentlemen are not to let themselves into invectives against the commitment, thereby to keep off their being charged with the information. Besides that, it is strange these gentlemen should know the privilege of my lords the bishops as peers, better than all the lords of the council, who are most of them themselves peers; and they that make the objection should have considered, whether these lords that made the commitment, did not think themselves concerned in all the privileges of peerage, as well as these seven noble lords!

Sir R. *Sawyer*. Is this an answer to our objection, Mr. Attorney?

Att. Gen. I say, it is a strange objection; and I answer, it is out of due time: for this we say, that my lords the bishops, being now here in court as prisoners upon a commitment, and we desiring to charge them with an information, you are not to examine the matter of their commitment, and therefore I do insist upon it, that the information should be read, and then you will consider, whether they are not bound to plead to it.

Mr. *Finch*. My lord, I hope Mr. Attorney General will not think legal objections to be invectives.

Att. Gen. Truly I know not what you call legal objections; I do not think yours are so, nor do I think legal objections are invectives; but I used that expression, as very proper for what you urged against the commitment.

L. C. J. Nay, gentlemen, do not quarrel about words.

Mr. *Finch*. My lord, we would not willingly have words given us to quarrel at.

Sol. Gen. My lord, the question is, Whether we are in the right method of practice, as to the course of the court; or they? It may be, these gentlemen think to make us angry, and take advantage of our being in a passion.

Mr. *Finch*. Mr. Solicitor, we desire to have our objections answered.

Sol. Gen. Nay, if you begin to be angry, gentlemen, we can be angry too.

L. C. J. I would have neither of you be angry.

Sol. Gen. It seems they would have an answer to their objections, but will not suffer us to give it; they would first examine, whether my lords the bishops have been duly committed? That, we say, is not to be done by the court as yet: your lordship sees they are actually in custody, by a commitment of the lords of the council; that appears by the return before your lordship, and for what they were committed. What do we now pray for the king? First, we move for a Habeas Corpus, then that this information may be read, and all is in order to bring this fact, for which they were committed, to a trial. It is said upon the return, they were sent to the Tower, for contriving, writing, and publishing a seditious libel against the king's

person and government, which, I think, is crime enough for a man to deserve to be committed for: they would have you to discharge these lords from this commitment (the return, as they say, being not legal) and that before the information be read: but we think their motion is irregular; for here is a crime charged in the commitment, and upon that commitment they are here now as criminals before your lordship; and Mr. Attorney has exhibited an information for the king, which is in the nature of a declaration at the king's suit; and that in this court, which is the supreme court now in being for the trial of matters of this nature. We will come to that question, whether they were legally committed, when there is a proper time for it. But now we find my lords the bishops in court, upon a commitment for a great crime: I repeat it again; it is for contriving, writing, and publishing a seditious libel against the king's government; and whether the king's counsel shall not have leave to make out this charge by an information, sure, can be no question at all in this court. I hear them mention the statute of Edward the third; but that is not at all to the purpose; that is but what was offered in another case that may be remembered,* and offered by way of plea, and pressed with a great deal of earnestness, but rejected by the court; and now what could not be received then by way of plea, these gentlemen would, by their importunity, have you receive by parole at the bar. I suppose the design is to entertain this great auditory with an harangue, and to persuade the weak men of the world (for the wise are not to be imposed upon) that they are in the right, and we in the wrong. Under favour, my lord, we are in the right for the king; we desire this information may be read, and let them plead what by law they can to it, according to the course of the court: but that which they now urge, is untimely and out of course.

Sir R. Sawyer. My lord, we offer this to your lordship—

Att. Gen. Why, gentlemen, you have been heard before your time already.

Serj. Pemberton. Pray, my lord, give us leave to answer what the king's counsel have objected.

L. C. J. The king's counsel have answered your objections, and we must not permit vying and re-vying upon one another: if you have no more to say, but only as to the matters that have been urged, you have been heard to it on both sides already.

Serj. Pemberton. I would, if you please, answer what has been objected by the king's counsel, and state the case aright.

Justice Allybone. Brother Pemberton, I do not apprehend that the objection you make against this commitment has any weight in it. The objection (as I take it) is this, that these lords were not legally committed, because they

were committed (says the return) by such and such lords of the council particularly named; and it does not specify them to be united in the privy council: now truly, with me, that seems to have no weight at all; and I will tell you why: If my lord chief justice do commit any person, and set his name to the warrant, he does not use to add to his name lord chief justice, but he is known to be so, without that addition. And would you have a different return from the lieutenant of the Tower to a Habeas Corpus, than the warrant itself will justify? The lords do not use to write themselves privy-counsellors; they are known to be so, as well as a judge, who only writes his name and does not use to make the addition of his office.*

Sir R. Sawyer. Pray, my lord, give me leave to be heard to this; I think truly it is a weighty objection; for, under favour, we say, it must upon the return here appear, that they were legally committed, before you can charge them with an information. I do not take exceptions to the warrant, because it is subscribed by such lords, and they do not write themselves lords of the council; they need not do that: and the return has averred that they are so; but the return ought to have been, that it was by the order of the privy-council, and so it must be, if they would shew my lords to be legally committed, that they were committed by order of the privy council, and not by such and such particular persons, lords of the privy-council. So in the case put by Mr. Justice Allybone, of a commitment by your lordship or any of the judges, it must be returned to be by such a warrant, by such a one Chief Justice, for that shews the authority of the person committing, and then your lordship's name to it, indeed, is enough, without the addition: but if it does not appear by the return, that there was sufficient authority in the person to commit, your lordship cannot take it to be a legal commitment. But now in this case they could have no authority to commit but in council; and this return seems to make it done by them as particular persons, and that is not a good return, with your lordship's favour, upon which these reverend and noble lords can be detained in prison. But what do they on the other side say to this? Why, we shall be heard to it anon: But, my lord, they very well know, it would be too late for that effect which we desire of our motion, and therefore we lay the objections now before you in its proper time: (say we) you ought not to read any information against us, because we are not legally here before the court; and sure, that which was said by the king's council, that your lordship may charge any one that you find here in court, which way soever he comes in, cannot be legal.

Att. Gen. Who ever said so?

Sir R. Sawyer. I apprehend you said so, Mr. Attorney, or else you said nothing.

* In Mr. Sidney's Case. See it in this Collection, vol. 9, p. 817.

* See the Case of Seizure of Papers, A. D. 1765.

Att. Gen. Sir Robert Sawyer, you of that side have a way of letting yourselves in to say the same things over again, and of making us to say what you please.

Sir R. Sawyer. Truly I did apprehend you laid down that for doctrine, which I thought a very strange one: for we say, with your lordship's favour, he that is in court without legal process, is not in court so as to be charged with an information.

Serj. Pemberton. My lord, it is not the body being found here that intitles the court to proceed upon it, but the person accused is to be brought in by legal process: Then if we be not here by legal process, the information cannot be charged upon us; and if we suffer it to be read, it will be too late for us to make this objection.

L. C. J. That you have all said over and over, and they have given it an answer.

Att. Gen. Pray, Mr. Serjeant, will you make an end? You have repeated your objection over and over, I know not how often, and will never be contented with our answer,

Just. Allybone. Sir Robert Sawyer, that which you said in answer to the case I put, methinks does not answer it: for if the return be as good, that it was by a warrant from such an one, lord chief justice, as if my lord chief justice had added the title of his office to his own name, when he subscribed the warrant; then this return, That this was done by such and such lords of the council, must be as good as if they had added that to their own names.

Sir R. Sawyer. That is not our objection.

Att. Gen. Your objection has been heard, and answered; we pray the information may be read.

Serj. Pemberton. No, we are not come to that yet.

Just. Allybone. Pray, would you have an averment by the lieutenant of the Tower, in his return to an Habeas Corpus, that it was done by them in the council-chamber?

Mr. Finch. My lord, the difference is this, with submission; a commitment by sir Robert Wright, chief justice, is a good commitment, and a return of that nature were a good return, because he is chief justice all over England, and hath authority to commit wherever he is; but a commitment by such an one, or such and such lords of the privy council, cannot be a return of a commitment; because, though they be lords of the council, yet neither single or apart, nor all together, have authority to do such an act, unless they be assembled in the privy council: there their authority is circumscribed; so that that must needs be a great difference between a commitment made by a judge who is always so, and a commitment made by a lord, or so many lords, by the name of lords of the privy council, who carry not their authority about with them, but are limited to their assembly in council.

Just. Allybone. Mr. Finch, indeed your objection is worth something, if my lord chief

justice could not act but as under the character of chief justice; for you are now arguing, that these lords could not do this act, but as lords of the council in council: the same (say I) may be said of a commitment by the lord chief justice; he cannot do it but under the formality of his authority, as he is chief justice, unless you will make it impossible for him to do any thing but as chief justice; or unless you make it impossible to separate his person from his authority.

Mr. Finch. Sir, the difference lies here; the authority of the one is general and universal, and goeth with him wherever he goes; the other's authority is limited to a particular sphere.

Just. Allybone. Why, would you have it averred, that they did it being assembled in council?

Mr. Finch. Under favour, they cannot justify any thing that was done by them as lords of the council, but in the privy council.

Just. Powell. Truly, my lord, for my part, I think there is no such great necessity of haste in this matter: here are exceptions taken to this return; and the matter transacted now before us, appears to me to be of very great weight; peradventure a greater or weightier has not been agitated in this place in any age: it concerns these noble and reverend lords in point of liberty: it comes suddenly upon us, and therefore my lord, I think it very fit we should consider a little of this matter, and consult the precedents of returns, how they are; for there are multitudes of returns of writs of Habeas Corpus in this court; therefore it were requisite, that we did consult the forms of other returns, and how the precedents, as to this matter, have always been: if they are according as this is, then all is well; but if they be otherwise, it is fit we should keep to the usual forms.

L. C. J. What's your opinion of it, brother Allybone?

Just. Allybone. I am still of the same mind I was, my lord, That he could make no return but this return he has made; and if his warrant was insufficient upon this account, that these particular persons, lords of the privy-council, did this act without saying, that they did it in privy-council; then it is not his return that could mend it; and truly I do not know that there does need any precedent for this; for every one knows where the lords of the council are; and it is a sufficient averment, this that is in the return.

Mr. Pollexfen. They are lords of the council every where; but they do not act as lords of the council any where but in council.

Just. Allybone. So my lord chief justice is chief justice every where.

Mr. Finch. And he can do judicial acts, as such, every where; but the lords of the council cannot act but in the council.

Just. Allybone. Nor is it to be presumed that they do it.

Mr. Finch. It is not a presumption that is to make any thing in this case, but the question

is, whether there be a legal return of a legal commitment?

Just. *Allybone*. Such public persons, in such public acts, can never be presumed to act in their separate private capacities.

Mr. *Finch*. But with submission, your lordships can judge only what is before you in this return, whether it be a good return, and whether here be a good authority asserted in the persons that did commit my lords the bishops?

L. C. J. Truly, as to this objection and exception that has been made by them, I have considered of it, and what has been said on all sides, and I think it is the usual way of commitment; I never saw any other; all the warrants that ever I saw, are of this form; if there were any precedents they should be shewn of that side.

Sir R. *Sawyer*. There are multitude of precedents otherwise, and none of this form.

L. C. J. I confess it is a case of great weight, and the persons concerned are of great honour and value; and I would be as willing as any body to testify my respects and regards to my lords the bishops, if I could see any thing in it worth considering of.

Sol. Gen. There's no colour for it, if they do but look upon the statute of the 16th and 17th of the late king, which arraigns the proceedings of his privy-council: That tells you what things belong to the cognizance of the privy-council, and what not; and there you have all the distinctions about commitments by the king and council, and by the lords of the council: and that act will shew, that this is a commitment according to the usual form. They know very well what the common stile of the orders and commitments of council is, as in other places and other commitments. By such an one, chief justice, that is the stile that is very well known for such warrants: so a commitment by such and such, naming them particularly, lords of the council, that's an order made by the lords in council; and that statute distinguishes between commitments of one sort and the other; and it does it, because sometimes warrants run in one form, and sometimes in another; but they all come within the direction of that statute. My lord, we are in a plain case, my lords the bishops come regularly before you, upon a commitment by the council; and therefore we pray they may be charged with this information.

Sir R. *Sawyer*. Pray, will your lordship give us leave to have that statute looked into, which Mr. Solicitor speaks of; and then we shall see whether it be to his purpose.

L. C. J. Let the statute be read.

Sol. Gen. If it be Keeble's book, it is the 16th of Charles the first; if it be the old book, it is the 16th and 17th of Car. towards the end.

Clerk reads. 'Provided always, and be it enacted, that this act, and the several clauses therein contained, shall be taken and expounded to extend only to the court of star-chamber; and to the said court holden before

the president and council in the marches of Wales, and before the president and council in the northern parts.

Sol. Gen. It is the paragraph before that.

Clerk reads. 'And be it also provided and enacted, that if any person shall hereafter be committed, restrained of his liberty, or suffer imprisonment, by the order and decree of any such court of Star-chamber, or other court aforesaid, now, or at any time hereafter, having, or pretending to have the same, or like jurisdiction, power, or authority to commit, or imprison, as aforesaid; or by the command or warrant of the king's majesty, his heirs or successors, in their own persons; or by the command or warrant of the council board, or of any of the lords, or others of his majesty's privy council, that in every such case, every person so committed, restrained of his liberty, or suffering imprisonment, upon demand——'

Sol. Gen. That is all: your lordship sees these several distinctions of the stile of commitment.*

Att. Gen. Now, pray favour us a little. My lord, I think these gentlemen will not deny, but that the lords of the council can commit. I must confess, they ask that which was pretty reasonable, if the case was as they would make it. They would have my lords the bishops discharged, because there is not a return of a good commitment, and that stands upon this presumption, that what is here said to be done by all these lords, at the end of whose names this is added, 'lords of the privy council,' was done by them out of council, which, I suppose, your lordship will not presume, but will take it, that they did this as lords of the council in council; and no man can say, but the lords in council can commit.

Sol. Gen. You may as well presume upon a warrant made by my lord chief justice, because it is not said where he did it, and therefore he did it in Scotland.

Att. Gen. I say again, unless your lordship will presume that which is not to be presumed, this must needs be a very good return.

Just. *Allybone*. Truly (as Mr. Solicitor says) you may as well desire us to presume that my lord chief justice would commit a man in Ireland or Scotland; I can see no imaginable difference.

Mr. *Finch*. My lord, that which we pray, is, not that your lordship would presume, but that you would not presume, but take the return as it is before you; and then see whether it can be thought to be a commitment by the lords in council?

Serj. *Pemberton*. Pray, my lord, spare us a

* In sir William Williams's copy it appears to have been at first written as it is printed in the text, and to have been afterwards corrected as follows: "Your lordship hath the several styles of commitments by the council board, mentioned in that statute, wherein you have a commitment in the stile of this commitment."

ing and legal understanding are two things, and we pray the judgment of the court.

Sol. Gen. And so do we, my lord, and pray your rule in it.

Just. Allybone. You may by the same reason say, that upon all commitments by warrant from justices of the peace, that the commitment was out of the county, if the party does not alledge in the warrant, or return, that the commitment was in the county. It is an objection that would put us upon presuming what we have no reason to presume.

L. C. J. If you would have our opinions, let my brothers declare theirs, I will soon tell you my mind.

Just. Holloway. Pray let the return be read again. [Which was done.]

Att. Gen. So that the return says, they were committed by virtue of a warrant of such and such by name, lords of the council, and whether this be a warrant of the council is the question; and we think it is plain enough, that it is a good return.

Just. Powell. I have given you my thoughts already: I think we ought to consult precedents in a case of this weight and nature; and truly I will not take upon me to say, whether it be a good return or not a good return, without looking into precedents.

Just. Allybone. For my own part, it does not stick at all with me, for the reasons I gave before. When any man that has an authority to commit, does commit a person to an inferior officer, and that officer has an Habeas Corpus brought to him, it is enough for him to return his warrant, by which the party was committed, and whatsoever he says by the bye, cannot have any influence, one way or other, to alter the nature of the thing. Now unless you would make every man that is a justice of the peace, to write his name, and stile himself justice of the peace, this must be a good commitment. Every commitment shall be presumed to be pursuant to the power of the person committing; and I am sure, take these lords separately, and they had no power to commit, and consequently such a warrant would be no authority to the lieutenant of the Tower to receive them: but when they send such a warrant as this, we shall presume it to be according to the power they have, and not according to the power they have not. This warrant is returned by the officer, and I cannot but presume that it is all very well.

Just. Holloway. My lords, I am very desirous and willing your lordships should have all the right and justice done you that can be, and, by the grace of God, I will endeavour it all I can. I see in this case it is agreed on both sides, that the council have a power to commit, and the commitment is here certified in the words of the warrant, and the lieutenant has made his return, that they were committed by virtue of this warrant. If the lieutenant of the Tower had returned any other commitment, you would have blamed him for a false return; but now you find fault with his return, because

he does not say, the warrant was made by the lords of the council, and in council: that is a thing so notoriously known to all the kingdom, that my lords were sent to the Tower by the council, that nobody doubts it; and being thus sent by this warrant, I do not see but that this is a very good return, and my judgment is, that the information ought to be read.

L. C. J. I told you in the beginning, after you had made your objections, that I thought it was as all other returns are; and I am of the same opinion still, I find no fault with the warrant, nor with the return.

Serj. Pemberton. There is no objection to the warrant at present upon this question.

L. C. J. Neither do I take upon me to say any thing, nor is there any thing now to be spoken of touching the fact for which these noble lords were committed.

Att. Gen. We pray, my lord, the information may be read.

Just. Holloway. There is no question about the fact; but whether this be a good return which is here made, that they were committed by such and such lords of the council?

L. C. J. I would do as much to give my lords the bishops ease, and set them at liberty, as I could possibly by law; but we must not break the rules of law for any one.

Sol. Gen. Pray read the information.

Mr. Finch. No, my lord, we oppose the reading of it.

Sol. Gen. Why! ought you not to be satisfied with the opinion of the court?

Mr. Finch. We have another thing to offer, which we must have the opinion of the court in, before this information can be read.

Att. Gen. Pray let us hear what it is?

Mr. Finch. My lord, we did humbly offer one objection more to your lordship against the reading of the information: the former objection was concerning the persons committing, in that it does not sufficiently appear upon the return, that they were committed by the lords in council; the court have given their opinion in that: but the other objection still remains, whether they ought to have been committed at all; and therefore when they now appear upon this Habeas Corpus, we say they were not legally committed to prison, because a peer ought not to be committed to prison in the first instance for misdemeanor.

Sol. Gen. If you please you may speak to that by and by; but that is not proper now for you to offer, or for the court to determine, whether a peer may be committed upon an accusation for a misdemeanor?

Mr. Finch. With submission, that is such a difficulty that lies in the way against the reading of the information, that you must get over it, before you can come at the reading of it.

Att. Gen. You will have your time for all this matter by and by; but certainly you cannot be admitted to it yet.

L. C. J. Truly I think you are too early with that exception.

Mr. Finch. With submission, we think this

is the proper time, and I will tell your lordship the reason why.

L. C. J. Mr. Finch, certainly every thing in the world that can be said, you will say for clients, and you shall be heard; for we are very willing to deliver these noble lords, if we can by law, and if the exceptions you make be legal.

Mr. Finch. My lord, we do not doubt your justice; and therefore we desire to offer what we have to say in this point: the only question (now it seems) is about our time of making our exception. Mr. Attorney (we apprehend) did say one thing which was certainly a little too large; that however any man comes into court, if the court find him here, they may charge with an information.

Att. Gen. Who says so? I said no such thing.

Mr. Finch. Then I acquit Mr. Attorney of it, he did not say so: then both he and I agree the law to be, that a man does not come into court, if he does not come in by legal process, he is not to be charged with an information; then, since we do agree in that proposition, certainly we must be heard to this point, whether we are here upon legal process, before you can charge us with this information?

Att. Gen. You think you have said a fine thing now, and take upon you an authority to make me agree to what you please.

Mr. Finch. Certainly the consequence is plain upon your own premises.

Att. Gen. Do you undertake to speak for me?

Mr. Finch. I am in the judgment of the court, and to them I leave it.

Att. Gen. I know you thought you had got an extraordinary advantage, by making me say what you please; but there has been very little said, but what has been grounded upon mistakes all along. This is that I do say, if a man comes in voluntarily upon any recognition, though he be not in custody; or if he comes in upon any process, if the court find him here, though that process be not for the thing charged in the information, yet the court is so much in possession of the person, that he shall plead to any information; and that I do say, and will stand by.

Sol. Gen. My lord, we are here in an extraordinary auditory, and this court is always a very great court, (but here is a greater and more noble assembly than usually we have) and these gentlemen to shew their eloquence and oratory, would, by converting propositions otherwise than they are delivered, put another construction upon them, than they do reasonably bear, and so draw strange inferences from them. But those arts, we are sure, will not prevail in this auditory; we say plainly, and the law is so (let them apprehend as they please) that your lordship cannot exhibit an information against any man that you find accidentally here in court. Then, says Mr. Finch, we are agreed: But withal (say I) take my other

propositions; If a person be brought into court by legal process, or upon any contempt whatsoever, by an attachment or warrant, or upon a Habeas Corpus after a commitment, being thus found in court, your lordship may charge him with an information. When these gentlemen, who are so vehement on the other side did preside here or stood in the places where Mr. Attorney and I now are, I can name them numbers of cases of the like nature with this, when good men and honest subjects have been compelled by them to appear to informations, and plead presently: They are the persons perhaps that made the precedents; they made the law by their authority for aught I know: I am sure I find the court in possession of this as declared law, and therefore I presume to pray the usual course may be followed.

Mr. Finch. Pray, my lord, spare us a word in this matter: I do agree with Mr. Attorney in this matter, but I do not agree with Mr. Solicitor.

Sol. Gen. You do not agree with yourself.

Mr. Finch. I hope I do, and always shall agree with myself; but I do not agree with you, Mr. Solicitor.

Sol. Gen. You do not in 1688, agree with what you said and did in 1680.

Mr. Finch. Says Mr. Attorney, a man that comes voluntarily in cannot be charged with an information; with him I agree. Says Mr. Solicitor, a man that comes in, and is found in court by any process, may be charged with an information: I say no, if the process be wholly illegal; for he cannot be said to be legally in court. Suppose a peer of the realm be taken upon a Capias, and is committed to the Marshalsea, and is brought up upon a Habeas Corpus, I would fain know, whether you could declare against him?

Att. Gen. No, we cannot.

Mr. Finch. And why is that, but because the process is illegal, and he is not truly in court: Then is it a proper time now to make this a question, Whether my lords here were legally committed, before you can lay any thing to their charge by way of information? For if the commitment be illegal, it is a void commitment; and if the commitment be void, the process is void, and then my lords are not legally in court.

L. C. J. That sure is but returning again to the same question that has been determined already.

Sol. Gen. If your lordship will permit them to repeat and reiterate the same things, we shall never have an end.

Mr. Finch. My lord, we pray these gentlemen of the king's counsel may be a little cool with us, and then they will find, we do not talk the same things over and over again, nor meddle with that which the court have given their judgment in.

L. C. J. Well, go on, Sir.

Mr. Finch. My lord, we say it is the privilege of the peers of England, that none of them shall be committed to prison for a misde-

meanor, especially in the first instance, and before judgment. This (we say) is the right of my lords the bishops, and that which they claim as lords of parliament. Now it appears upon this return and the warrant, that the council-table hath committed them (for your lordship and the court hath ruled it, that this commitment must be taken to be by order of the privy council, and we meddle not with that further); but we say that the council-table may commit a man unjustly, that is certain. There has been relief often given in this court against commitments by the council-table: And that they were unjustly committed, depends upon that point of their privilege as peers.

Serj. *Pemberton*. My lord, we say, that the lords of the council have illegally committed these noble persons, who are peers of the realm, and ought to have the privilege of their peerage, which is not to be committed for a misdemeanor; that the council ought not to have done: For the peers of England ought no more to be committed for a misdemeanor, and to be imprisoned, especially upon the first process, than they may be in a case of debt. It is true, in the case of treason, felony, or the breach of the peace, the peers have not such a privilege; they may be committed: But for a misdemeanor (as this does appear to be in the warrant of commitment) they ought not to be committed. But they were committed by the lords of the council; and we now complain of this to your lordship as illegal, and therefore pray my lords may be discharged.

Sir *R. Sawyer*. Will your lordship be pleased to favour me a word on the same side, for my lords the bishops. It must be agreed to me, that if a peer be brought into court, as taken by a *Capias*, he cannot be charged with a declaration: and the reason is, because the process is illegal: Then, my lord, with submission, when a peer comes upon a foreign commitment, and is brought in custody upon a *Habeas Corpus*, this is either in the nature of a process, or a final commitment, as a judgment; they will not say, that this is a good commitment, so as to amount to a judgment; for the council board could not give a judgment in the case; besides, the commitment is illegal, because it is not a commitment till they find security to answer an information here, but it is a warrant to keep them for a misdemeanor: Besides, there is another thing we have to say to this warrant (for I am making objections against the validity of this commitment), it does not appear that there was any oath made, and therefore the court must adjudge that there was no oath made, and then no men ought without oath to be committed, much less a peer. But that which we chiefly rely upon is, That my lords ought not to have been committed for this, which is but a misdemeanor at most: And if they use it as process, to bring my lords the bishops to answer an information, we say, by the law no such process can be taken out against the persons of peers for bare misde-

meanors. I do agree, that for felony, treason, or surety of the peace, the persons of peers may be committed; and that which is called surety of the peace in our books, Mr. Solicitor knows very well, in some of the rolls of parliament, is called breach of the peace, but it is all one; and the meaning, in short, is, that it is such a breach of the peace, as for which a man by law may be obliged to find sureties for the peace. If it should mean a breach of the peace by implication, as all trespasses and misdemeanors are said to be *contra Pacem* in the indictment, or information, then it were a simple thing to enumerate the cases wherein privileges did not lie; for there could be no information whatsoever, but must be *contra Pacem*, and so there could be no such thing as privilege at all. And besides, we say, the very course of this court is contrary to what they would have; for in the case of a peer, for a misdemeanor, you go first by summons, and then you do not take out a *Capias* as against a common person, but the next process is a *Distringas*, and so *ad infinitum*. And I do appeal to them on the other side, and challenge them to shew any one precedent, when a peer was brought thus into court, to be charged with an information, without it were in the case of an apparent breach of the peace; for he must be charged in custody, and there must be a *Committitur* to the marshal, to entitle the court to proceed. Your lordship will find but very few precedents of cases of this nature about common persons; for till within these fourteen or fifteen years there was no such thing ever done against a common person: But this was the rule; First there went out a *Subpœna*, and then an attachment, and when the party was taken upon the attachment, he is taken to come in upon process, and then the court would charge him presently: but if he did appear upon the summons, they would not charge him, but he had time to take a copy of the information, and an imparlance of course, till the next term, before he could be compelled to plead. But in the case of a peer, there never was any such precedent as the attaching his person, but only a summons and distress: And I would be glad the king's counsel would shew, that ever there was any such process taken out against the person of a peer, for a meer misdemeanor. My lord, it is plain, what breach of the peace means in every information; and I only speak this to acquaint the court how the constant proceedings in all these cases have been. These informations were anciently more frequent in the star chamber; and what was the process there? Not the common process of a *Subpœna*, that was not the course there; but the process was a letter from the chancellor; that if the party upon that letter did not appear, in a common case, there went out an attachment; but in a peer's case, never: And so it appears by Crompton's Jurisdiction of Courts, Tit. Star Chamber 35. This appears likewise by the proceedings in chancery against the peers, till the queen's

time. They did not so much as take out an attachment after default upon a *Subpœna*, but they would then, in the queen's time, be so bold as to take out an attachment against a lord for not appearing; but that course was condemned as illegal; so we find in my lord Dyer.

Att. Gen. That was at a common person's suit.

Sir R. Sawyer. But the proceedings in the star chamber were at the king's suit, and I am sure Mr. Solicitor knows, that the peers privileges reach to informations; but, as I was saying, it was so adjudged as to the chancery in my lord Cromwell's case, 14 Eliz. Dyer, 315.

L. C. J. You take a great compass, sir Robert Sawyer; but pray remember what you laid down at first, for the ground of your discourse, That there was never any commitment of a peer for a bare misdemeanor: You must keep to that; that is the point you are to look after.

Sir R. Sawyer. My lord, I will so; I do not cite these cases but for this purpose, to shew, that in all courts the peers have particular privileges; and I am sure they can produce you no precedents for any such proceedings against a peer. In my experience of these matters, I never knew any such; nay, I knew it always to be otherwise, that in informations for misdemeanors, there did never issue out a *capias* against a peer: and Mr. Attorney knows very well, it was so in the late case of my lord Lovelace; for that case of my lord Devonshire,* that it was an express breach of the peace, though it was debated and disputed then; so that I take it, these noble lords cannot be charged with this information, because they do not come in by legal process; and unless they can shew me any cases, where a peer did ever come in upon such a commitment, and answered to an information upon that commitment, it must certainly be allowed not to be the legal course; though if such a precedent could be shewn, that passed *sub silentio*, without debate or solemn determination, that would not do, nor could bind the rest of the peers. If one man would lose a particular benefit he has, all the whole body must not lose it; and the benefit is not small, of time to make his defence; of imparling, of taking a copy of the indictment, and preparing himself to plead as his case would bear; and indeed a common person has used to have these privileges, though in some cases of late, they have taken the other course; and if a *capias* went out (which we say cannot go against a lord) and the party were brought in, he was to answer immediately. Now, my lord, I take it, that the privileges of peers is in all times the same with the parliamentary privilege in parliament-time, which reacheth to informations, as well as other actions. My lord Coke is express in this point, in the 4 Instit. 25. If that objection should hold good, that every information

being *contra pacem*, that should be a breach of the peace, then (as I said before) privilege will hold in no information, which is contrary to that and all our other books: it is only such a breach of the peace, as for which security of the peace may be required. But further, that this is a privilege enjoyed by the peers, spiritual as well as temporal, I suppose will not be denied; for I think they will not question, but that the bishops and abbots that were lords of parliament were peers; and we find in our books, when the court has been moved for a *capias* against an abbot, if he were a mitred abbot, and sat in the Lords' House, it was always said, that no such process ought to go; and so it is in the case of bishops: but indeed for other noblemen, the difference is this: where it does not appear upon record, that they are lords in parliament, there the courts have put them to bring their writs of privilege; but where it does appear upon record, that they are peers, the court is to allow and take notice of their privilege; and there needs no such writ. Now that the parliament privilege, and the privilege of peers (as to their persons) is the same, appears by the form of the writ in the register, fol. 287, Fitz. Herb. Nat. Brev. 247. The words of the writ are these, That if such a one be sued at the suit of another, the writ commands, that a peer out of parliament-time should have the same privilege with those summoned by the king to the parliament; and I know not any difference that can be put between them; and it cannot be denied, that all informations whatsoever, unless such as are for breaches of the peace, for which surety of the peace may be required, are under the controul of the parliament privilege: so that upon these grounds, I do press that my lords the bishops may be discharged. If there be any information against us, we are ready to enter our appearance, to answer it according to the course of the court: but if the information be for no other thing than what is contained in the warrant of commitment, then their persons ought to be privileged from commitment.

Mr. Pollexfen. If your lordship please to take it altogether, you will find it a case very well worth your consideration, it being the case of all the peerage of England.

Att. Gen. My lord, these gentlemen have taken a great deal of liberty, and spent much of your time in making long arguments, and after all, truly, I do not know where to have them, nor can understand what they would be at. It seems they agree, that for treason, felony, and breach of the peace, a peer may be committed.

L. C. J. That is, say they, such a breach of the peace, as for which surety of the peace may be required.

Att. Gen. Then all the learning they have been pleased to favour us with is at an end; for if here be any thing charged upon the bishops, for which sureties of the peace may be required, then this is a good commitment.

* See vol. 11, p. 1354, of this Collection.

L. C. J. That they must agree upon their own arguments.

Att. Gen. Can then any man in the world say, that a libel does not require sureties of the peace? For we must now take it as it is here upon this return. How my lords the bishops will clear themselves of it, is a question for another time; but the warrant says, they were committed for contriving, framing, and publishing a seditious libel against his majesty and his government: is there a greater misdemeanor? or is there any thing on this side a capital crime that is a greater offence? is there any thing that does so tread upon the heels of a capital offence, and comes so near the greatest of crimes that can be committed against the government? not to enlarge at this time upon what the consequences of such things may be; is there a greater breach of the peace than such seditious practices? no doubt, any man may be committed for it, and may be bound to find sureties for his good behaviour.

Sir R. Sawyer. I say sureties of the peace, not of the good behaviour.

Sol. Gen.* Pray my lord, would you consi-

* Of this Argument of sir William Williams (including what follows the interruption by the bishop of Peterborough) in his MS. alterations are made in almost every sentence. The following is its altered state:

Mr. Sol. Gen. Pray, my lord, will you consider where we are, and where we are going; these gentlemen are out of the way and would have us follow them. We are now upon a single question as this case stands before your lordship upon the Habeas Corpus and return. Here is a supposed libel said to be contrived, made, and published against the king and his government by my lords the bishops. This is the accusation; I hope they are innocent and will prove themselves so. But suppose it be true that they have made a seditious libel against the king and government, will any man say that this is not done *vi et armis* in construction of law? And all the informations that were exhibited by sir Robert Sawyer when he was attorney general, and he exhibited a great many for libels against the king and the government, are alleged to be *vi et armis et contra pacem*.

Bp. of Peterborough. Was it so in your own case, Mr. Solicitor?

Mr. Sol. Gen. Yes, it was so in my case; and you are one of them that prosecuted me for aught I know, such kind of prosecution being preached to the people. But so my lord it was in many other cases within time of memory. The counsel for my lords the bishops admit a peer may be imprisoned for treason, felony, or breach of the peace, but that breach of the peace they say is where the law requires sureties of the peace; but is there any certainty where sureties of the peace shall be required, and where not? Then I would put this case: These lords have contrived and published a seditious libel against the king and his

der where we are; we are going towards France, I think, or some farther country: they have set us out to sea, and I do not see after this rate, when we shall come to land. Certainly, these gentlemen are mightily out of the way, and would fain have us so too! we are here upon a single question, as this case stands before your lordship, upon the return. Here is a libel, a seditious libel, said to be contrived,

government, whether this be not such a breach of the peace as will require sureties of the peace? This is the question before the court, and the law plainly appears to be so in sir Baptist Hicks's Case in Hobart, fol. 215. A man writes a private letter, and delivers it closed and sealed up into the hands of sir Baptist Hicks privately, wherein were contained some reproachful reflexions upon sir B. H. although no fighting, this was sentenced a libel and breach of the peace in the Star-chamber, because such letters incite and stir up to fighting, which may occasion bloodshed; and I think there cannot be a greater breach of the peace than for a man to come to the king's face and publish a libel against him; and yet, according to their assertion, this man shall go away, and you shall not take him up but take a subpoena against him, and wait upon the delays of all the ordinary process of the court in common cases; and they tell you another thing, that a Capias does not lie upon an information for misdemeanor against the person of a peer, and that there is no precedent of any such thing; but I would pray them to remember the Case of my lord Lovelace, in the first year of this king's reign, in this court, for breaking a footman's head upon a public affront given him by the footman. His lordship was bound in recognizance to appear in this court the first day of the then next term, and upon his appearance was charged with an information for the misdemeanor without any process; and as to that precedent I think sir Robert Sawyer and Mr. Finch will not contradict me. There was likewise the late earl of Pembroke's Case, who in a disorderly house occasioned the flight of some disorderly persons for fear. Upon a motion in this court in the last king's reign, an attachment was awarded against him for this supposed misdemeanor. My lord, we have gone out of the way too much already, and these gentlemen would lead us further, if the court will endure it, but I hope your lordship will reduce us to the methods of proceedings in this court in matters of this nature. Here is an information which we desire may be read; if they have any thing to plead to it, their time for that will come after it is read. If they think they have been illegally imprisoned, it appears plainly upon the face of this return who they were that did commit them. Here are a great many noble lords to answer an accusation of false imprisonment or otherwise. If my lords the bishops will think fit to question them, these learned gentlemen are very able to advise them what they should do in it.

Q

made and published against the king and his government, by these noble lords the prisoners. This is the accusation; suppose this be true, that is to be proved hereafter; I hope they are innocent, and will prove themselves so: but suppose it to be true, that they have made a seditious libel against the king and his government, will any man say, that this is not done 'vi et armis?' this is a libel with a witness; nay, two or three degrees more will carry it to high treason, and all the informations that were exhibited by sir Robert Sawyer, when he was Attorney General (and he exhibited a great many for libels,) constantly these words were in, 'vi et armis et contra pacem.'

Bishop of *Peterborough*. Was it so in your own case, Mr. Solicitor?

Sol. Gen. Yes, it was so in my own case, and you were one of them that prosecuted me, for aught I know; or if you did not prosecute me, you preached against me; or if you did not, some of your tribe did: but so, my lord, it was in many other cases, within time of memory. Sir Robert Sawyer has passed a compliment upon me, of my great skill in parliament matters; but truly there needs no great skill in matters where the law is so plain. A peer they agree may be in prison for treason, felony, or breach of the peace; but that breach of the peace, say they, is where the law requires sureties of the peace: but is there any certainty where sureties of the peace shall be required, and where not? then I would put this case; these lords have contrived and published a seditious libel against the king and his government; and whether this be not such a breach of the peace, as will require sureties of the peace, is the question before you.* And it plainly appears to be so, in sir Baptist Hicks's case, in Hobart, 215. [See, too, Poph. 139, and 1 Keb. 676, 1 P. Wms. 17.] If a man write a private letter provoking another to fight, although there be no fighting, this is a breach of the peace. Now a letter can do no wrong in that kind, but as it incites and stirs up to fighting, which may occasion bloodshed; and I think there cannot be a greater breach of the peace, than for a man to come to the king's face, and publish a libel against him, and yet, according to their doctrine, this man shall go away, and you shall not take him up, but take a *subpœna* against him, and wait for the delay of all the ordinary process; and they tell you another thing, that a *capias* does not lie upon an information against the person of a peer, and that there is no precedent of any such thing; but I would pray them to remember the case of my lord Lovelace, about some three years ago, for breaking a footman's head.† It

* As to this point, see in this Collection the Case of John Wilkes, esq. A. D. 1763.

† Lord Lovelace had beaten his footman, who obtained a warrant, which lord Lovelace refused to obey: To this alludes the following clause in the prince of Orange's Declaration of October the 10th, 1688; "Those evil counsel-

seems, if a man libels the king in his own presence, that is not so great a matter as a little correction to an insolent footman; but there he was bound in a recognizance to appear there in this court, and accordingly he did appear, and was charged with an information; and as to that precedent, I do believe sir Robert Sawyer and Mr. Finch won't contradict me. This was in the first year of this king. There was likewise my lord of Pembroke's case, who* went to a disorderly house, and there frightened some people: we moved the court, and had an attachment against him for a misdemeanor, and he was glad to compound the thing, or it had not ended so soon as it did; and yet if a lord comes to the king's person, and affronts him to his very face, will not an attachment lie against him for it? certainly it will. My lord, we have gone out of the way too much already, and these gentlemen will lead us farther; but we hope your lordships will reduce us to the methods of the law. Here is an information which we desire may be read; if they have any thing to plead to it, their time for that will come after it is read: if they think they have been illegally imprisoned, it appears plainly upon this return, who they were that did commit them. Here are a great many noble lords to answer an action of false imprisonment, if these lords think fit, and may have these learned gentlemen, that are very well able to advise them what they should do in it.

Sir R. Sawyer. We pray your lordship's judgment, whether the cases put by Mr. Solicitor are like our case?

Sol. Gen. They are as like, as sir Robert Sawyer is to Mr. Attorney that was.

Sir R. Sawyer. Those cases are of apparent breaches of the peace; so likewise was my lord of Devonshire's Case; but certainly that was not at all like this.

Mr. Finch. With your lordship's favour, I would add but one word, and I would repeat nothing of what has been said: All that I shall say is this; There is a great deal of difference between an actual breach of the peace, and that which in the bare form of an information is a breach of the peace, by construction of law, it being *contra Pacem*. Suppose it be laid that

lors have also treated a peer of the realm as a criminal, only because he said, that the subjects were not bound to obey the orders of a Popish justice of peace; though it is evident, that they being by law rendered incapable of all such trust, no regard is due to their orders: this being the security which the people have by the law for their lives, liberties, honours and estates, that they are not to be subjected to the arbitrary proceedings of Papists, that are, contrary to law, put into any employments civil or military." See 1 Ralph, 1025.

* Perhaps the same who was tried for murder, in the year 1678. See the Case in this Collection, vol. 6, p. 1309. In a note to that Case, mention is made of other outrages committed by lord Pembroke.

a man did *vi et armis* speak words, will that make the words a breach of the peace?

Sol. Gen. It must be *vi et armis*, and certainly is a breach of the peace; if the words be alleged to be scandalous against the king's government.

Mr. Finch. If a man write a petition, are the pen and ink that he uses the arms?

Sol. Gen. My lord, I hope, Mr. Finch remembers what I heard him say in *Algernon Sidney's Case*, '*scribere est agere*.' Were the pen and ink the agents in that case: Mr. Sidney was the patient we know.

Mr. Finch. I think it is so, Mr. Solicitor, but every action is not a breach of the peace.

L. C. J. Well, let my brothers deliver their opinions, I will give you mine.

Just. Allynbone. The single question now is, Whether or no that which Mr. Solicitor was pleased to name as the crime, and lay it to the charge of my lords the bishops, that is, a seditious libel, be a breach of the peace? I do confess that there is little of argument to be drawn from forms of indictments; and I shall put no great stress upon the words, *Vi et Armis*, where the fact will not come near it; but if a commitment may ensue (as they seem to agree) where ever surety of the peace may be required, nothing seems more important to me, than that surety of the peace should be required, where there is any thing of sedition in the case; and wherever there is a seditious act, I cannot tell how to make any other construction of it, but that it is an actual breach of the peace; that is my opinion.

Just. Powell. I am of the same opinion in this point too, as I was in the other point before: it was a matter of great consequence, I thought, upon the former point, but now it appears to me, to be of far greater consequence than it did at first; for here, all the great, high, and noble Peers of England are concerned in it, as to their privilege. Our predecessors in this court heretofore would not determine the privileges of the peers, but left them to themselves to make what judgment they pleased of them. I think truly it is a thing of that weight, that it may be very fit for the court to take time to consider of it, and I declare, for my own part, I will not take upon me to deliver any opinion in a matter of this consequence, before I have consulted all the books that can give me any light in the case.

Just. Allynbone. Brother Powell, I am not determining, limiting, or cramping the privilege of peers, but I am only considering whether or no a seditious libel be a breach of the peace. It is agreed to be on all hands a breach of the peace. Is there any thing that will require sureties of the peace to be given upon the doing of it? For there sir Robert Sawyer has laid the foundation of his distinction, and if that shall draw any person under a commitment, then, say I, in my judgment, wherever there is a seditious libel, there is that which is an actual breach of the peace; for I am sure there

is that which is sufficient to require sureties of the peace. I controvert not the right of the peers one way or other, but only declare my opinion, that this is a fact that comes within the rule laid down by them, that what will require sureties of the peace, is a breach of the peace.

Just. Holloway. God forbid that in a case of this nature, any one shall take upon him here to say that every misdemeanor were a breach of the peace: I say not so; but certainly there are some such misdemeanors as are breaches of the peace; and if here be such a misdemeanor before us, then it is acknowledged, that even in parliament-time, a privileged person might be committed for it: For in treason, felony, and breach of the peace, privilege does not hold. I will not take upon me, as my brother said, to determine concerning the privilege of the peers, it is not of our cognizance, nor have we any thing to do, either to enlarge or confine privilege, nor do we determine whether this be such a libel as is charged in the information, that will come in question another time; but certainly as this case is, the information ought to be read, and my lords ought to appear and plead to it.

L. C. J. Certainly we are all of us here as tender of the privileges of the peers as any in the world can be, and as tender as we would be, and ought to be in trying any man's right: It becomes us to do it with great respect and regard to my lords the bishops; and therefore I would be as careful (if that were the question before me) to consider very well before I give my opinion, as ever I was in my life. But when I see there can come no mischief at all to the privileges of the peers, by what is agreed on all hands, I think I may very justly give my opinion: For here is the question, Whether the fact charged in the warrant be such a misdemeanor as is a breach of the peace? And the words of the warrant (which is now upon the record) being such as have been recited, I cannot but think it is such a misdemeanor as would have required sureties of the peace; and if sureties were not given, a commitment might follow; and therefore I think the information must be read.

Att. Gen. We pray the Clerk may read it.

Clerk reads. 'Middlesex, ss. Memorand.
' That sir Thomas Powis, knight, Attorney
' General of our lord the king, who for our said
' lord the king in this behalf sues, comes in his
' own person here into the court of our said
' lord the king, before the king himself at
' Westminster, on Friday next, after the mor-
' row of the Holy Trinity in this term, and for
' our said lord the king, gives the court here to
' understand, and be informed, that our said
' sovereign lord the king, out of his signal
' clemency'—

Sol. Gen. Read it as it is in Latin.

Bishop of Peterborough. My lord, we desire it may be read in English, for we don't understand Law Latin.

Sol. Gen. No, my lords the bishops are very

learned men, we all know; pray read it in Latin.

Clerk reads. “Memorandum, Quod Thomas Powis, Miles, Attornatus Domini Regis nunc Generalis, qui pro eodem Domino Rege in hac parte sequitur, in propria Persona sua venit hic in Curia dicti Domini Regis coram ipso Rege apud Westmonasterium, Die Veneris proxime post crastinum Sanctæ Trinitatis, isto eodem Termino, et pro eodem Domino Rege, Dat Curie hic intelligi et informari, quod dictus Dominus Rex, nunc ex insigni Clementia et benigna Intentione suis erga Subditos suos Regni sui Angliæ per Regiam suam Prerogativam, quarto die Aprilis, Anno Regni Dicti Domini Regis nunc Tertio, apud Westmonasterium in Comitatu Middlesexie, Declarationem suam Intitulatam, his majesty's gracious Declaration to all his loving subjects for liberty of conscience, gerentem Datum eisdem Die et Anno, Magno Sigillo suo Angliæ Sigillatam publicavit; in qua quidem Declaratione continetur.”

‘JAMES R.

‘It having pleased Almighty God, not only to bring us to the imperial crowns of these kingdoms through the greatest difficulties, but to preserve us by a more than ordinary providence, upon the throne of our royal ancestors, there is nothing now that we so earnestly desire, as to establish our government on such a foundation as may make our subjects happy, and unite them to us by inclination as well as duty, which we think can be done by no means so effectually, as by granting to them the free exercise of their religion for the time to come, and add that to the perfect enjoyment of their property, which has never been in any case invaded by us since our coming to the crown; which being the two things men value most, shall ever be preserved in these kingdoms during our reign over them, as the truest methods of our peace, and our glory. We cannot but heartily wish, as it will easily be believed, that the people of our dominions were members of the Catholic church, yet we humbly thank Almighty God, it is, and hath long time been our constant sense and opinion (which upon divers occasions we have declared,) that conscience ought not to be constrained, nor people forced in matters of mere religion. It has ever been directly contrary to our inclination, as we think it is to the interest of government, which it destroys by spoiling trade, depopulating countries, and discouraging strangers; and finally, that it never obtained the end for which it was employed. And in this we are the more confirmed by the reflections we have made upon the conduct of the four last reigns. For after all the frequent and pressing endeavours that were used in each of them, to reduce these kingdoms to an exact conformity in religion, it is visible, the success has not answered the design; and that the difficulty is invincible. We there-

fore, out of our princely care and affection unto all our loving subjects, that they may live at ease and quiet, and for the encrease of trade, and encouragement to strangers, have thought fit, by virtue of our royal prerogative to issue forth this our declaration of indulgence, making no doubt of the concurrence of our two houses of parliament, when we shall think it convenient for them to meet. In the first place, we do declare, that we will protect and maintain our archbishops, bishops, and clergy, and all other our subjects of the church of England, in the free exercise of their religion, as by law established, and in the quiet and full enjoyment of all their possessions, without any molestation or disturbance whatsoever. We do likewise declare, that it is our royal will and pleasure, that from henceforth the execution of all and all manner of penal laws in matters ecclesiastical, for not coming to church, or not receiving the sacrament, or for any other nonconformity to the religion established, or for or by the reason of the exercise of religion in any manner whatsoever, be immediately suspended, and the further execution of the said penal laws, and every of them is hereby suspended. And to the end that by the liberty hereby granted, the peace and security of our government, in the practice thereof, may not be endangered, We have thought fit, and do hereby straightly charge and command all our loving subjects, that as we do freely give them leave to meet and serve God after their own way and manner, be it in private houses, or places purposely hired or built for that use, so that they take special care that nothing be preached or taught amongst them which may any ways tend to alienate the hearts of our people from us or our government, and that their meetings and assemblies be peaceably, openly, and publicly held, and all persons freely admitted to them; and that they do signify and make known to some one or more of the next justices of the peace, what place or places they set apart for those uses. And that all our subjects may enjoy such their religious assemblies with greater assurance and protection, We have thought it requisite, and do hereby command, that no disturbance of any kind be made or given under them, under pain of our displeasure, and to be further proceeded against with the uttermost severity. And forasmuch as we are desirous to have the benefit of the service of all our loving subjects, which by the law of nature is inseparably annexed to, and inherent in our royal person, and that none of our subjects may for the future be under any discouragement or disability (who are otherwise well inclined and fit to serve us) by reason of some oaths or tests that have been usually administered on such occasions, we do hereby further declare, That it is our royal will and pleasure, that the oaths commonly called the oaths of supremacy and allegiance, and also the several tests and declarations mentioned

‘ in the acts of parliament made in the twenty
 ‘ fifth and thirtieth years of the reign of our
 ‘ late royal brother king Charles the second,
 ‘ shall not at any time hereafter be required to
 ‘ be taken, declared, or subscribed by any per-
 ‘ son or persons whatsoever, who is, or shall be
 ‘ employed in any office or place of trust, either
 ‘ civil or military, under us, or in our govern-
 ‘ ment. And we do further declare it to be
 ‘ our pleasure and intention, from time here-
 ‘ after, to grant our loyal dispensations, under
 ‘ our great seal, to all our loving subjects so to
 ‘ be employed, who shall not take the said
 ‘ oaths, or subscribe or declare the said tests
 ‘ or declarations in the above-mentioned acts,
 ‘ and every of them. And to the end that all
 ‘ our loving subjects may receive and enjoy the
 ‘ full benefit and advantage of our gracious in-
 ‘ dulgence hereby intended, and may be ac-
 ‘ quitted and discharged from all pains, penal-
 ‘ ties, forfeitures and disabilities by them, or any
 ‘ of them incurred or forfeited, or which they
 ‘ shall or may at any time hereafter be liable
 ‘ to, for or by reason of their nonconformity, or
 ‘ the exercise of their religion, and from all
 ‘ suits, troubles or disturbances for the same,
 ‘ We do hereby give our free and ample par-
 ‘ don unto all nonconformists, recusants, and
 ‘ other our loving subjects, for all crimes and
 ‘ things by them committed, or done contrary
 ‘ to the penal laws formerly made relating to
 ‘ religion, and the profession or exercise there-
 ‘ of; hereby declaring that this our royal par-
 ‘ don and indemnity shall be as good and effec-
 ‘ tual to all intents and purposes, as if every in-
 ‘ dividual person had been therein particularly
 ‘ named, or had particular pardons under our
 ‘ great seal, which we do likewise declare shall
 ‘ from time to time be granted unto any person
 ‘ or persons desiring the same, willing and re-
 ‘ quiring our judges, justices, and other officers,
 ‘ to take notice of, and obey our royal will
 ‘ and pleasure herein before declared. And
 ‘ although the freedom and assurance we have
 ‘ hereby given in relation to religion and pro-
 ‘ perty, might be sufficient to remove from the
 ‘ minds of our loving subjects all fears and jea-
 ‘ lousies in relation to either; yet we have
 ‘ thought fit further to declare, that we will
 ‘ maintain them in all their properties and pos-
 ‘ sessions, as well of church and abby lands, as
 ‘ in any other their lands and properties what-
 ‘ soever.

“ Et idem Attornatus dicti Domini Regis
 nunc Generalis pro eodem Domino Rege ul-
 terius dat Curiae hic intelligi et informari,
 quod postea, scilicet, vicesimo septimo die
 Aprilis Anno Regni dicti Domini Regis nunc,
 &c. quarto, apud Westmonasterium prædic-
 tum in Comitatu Middlesexiae prædicto, idem
 Dominus Rex nunc ex eadem Clementia et
 benigna intentione suis erga subditos suos
 Regni sui Angliæ, per Regiam suam Præro-
 gativam, aliam Regalem suam Declarationem
 Intitulatam, *his Majesty's gracious Declara-*
tion, gerentem datum eisdem die et anno
 ultimo mentionatis, magno sigillo suo Angliæ

similiter sigillatam, publicavit; in qua quidem
 Declaratione continetur.

JAMES R.

‘ Our conduct has been such in all times, as
 ‘ ought to have persuaded the world, that we
 ‘ are firm and constant to our resolutions; yet,
 ‘ that easy people may not be abused by the
 ‘ malice of crafty, wicked men, we think fit to
 ‘ declare, that our intentions are not changed
 ‘ since the 4th of April, 1687, when we issued
 ‘ out our Declaration for liberty of conscience
 ‘ in the following terms:—

*His Majesty's gracious Declaration to all his
 loving subjects for Liberty of Conscience.*

JAMES R.

‘ It having pleased Almighty God, not only
 ‘ to bring us to the imperial crowns of these
 ‘ kingdoms through the greatest difficulties,
 ‘ but to preserve us by a more than ordinary
 ‘ Providence upon the throne of our royal
 ‘ ancestors, there is nothing now that we so
 ‘ earnestly desire as to establish our govern-
 ‘ ment on such a foundation as may make our
 ‘ subjects happy, and unite them to us by in-
 ‘ clination as well as duty; which we think
 ‘ can be done by no means so effectually, as
 ‘ by granting to them the free exercise of their
 ‘ religion for the time to come, and add, that
 ‘ to the perfect enjoyment of their property,
 ‘ which has never been in any case invaded by
 ‘ us since our coming to the crown; which
 ‘ being the two things men value most, shall
 ‘ ever be preserved in these kingdoms during
 ‘ our reign over them, as the truest methods
 ‘ of their peace and our glory. We cannot
 ‘ but heartily wish, as it will easily be be-
 ‘ lieved, that the people of our dominions were
 ‘ members of the Catholic church; yet we
 ‘ humbly thank Almighty God, it is, and hath
 ‘ long time been our constant sense and opi-
 ‘ nion (which upon divers occasions we have
 ‘ declared) that conscience ought not to be
 ‘ constrained, nor people forced in matters of
 ‘ mere religion. It has ever been directly
 ‘ contrary to our inclination, as we think it is
 ‘ to the interest of government, which it
 ‘ destroys by spoiling trade, depopulating coun-
 ‘ tries, and discouraging strangers, and finally,
 ‘ that it never obtained the end for which it
 ‘ was employed. And in this we are the more
 ‘ confirmed by the reflections we have made
 ‘ upon the conduct of the four last reigns. For
 ‘ after all the frequent and pressing endeavours
 ‘ that were used in each of them, to reduce
 ‘ these kingdoms to an exact conformity in
 ‘ religion, it is visible the success has not an-
 ‘ swered the design; and that the difficulty is
 ‘ invincible. We therefore, out of our princely
 ‘ care and affection unto all our loving sub-
 ‘ jects, that they may live at ease and quiet,
 ‘ and for the increase of trade, and encourage-
 ‘ ment to strangers, have thought fit, by
 ‘ virtue of our royal prerogative, to issue forth
 ‘ this our declaration of indulgence, making no
 ‘ doubt of the concurrence of our two houses.

' of parliament, when we shall think it con-
 ' venient for them to meet. In the first place
 ' we do declare, that we will protect and
 ' maintain our archbishops, bishops, and clergy,
 ' and all other our subjects of the church of
 ' England, in the free exercise of their religion,
 ' as by law established, and in the quiet and
 ' full enjoyment of all their possessions, with-
 ' out any molestation or disturbance what-
 ' soever. We do likewise declare, that it is
 ' our royal will and pleasure, that from hence-
 ' forth the execution of all and all manner of
 ' penal laws in matters ecclesiastical, for not
 ' coming to church, or not receiving the sacra-
 ' ment, or for any other non-conformity to the
 ' religion established, or for or by reason of the
 ' exercise of religion in any manner what-
 ' soever, be immediately suspended, and the
 ' further execution of the said penal laws, and
 ' every of them is hereby suspended. And to
 ' the end that by the liberty hereby granted,
 ' the peace and security of our government, in
 ' the practice thereof, may not be endangered,
 ' we have thought fit, and do hereby streightly
 ' charge and command all our loving subjects,
 ' that as we do freely give them leave to meet
 ' and serve God after their own way and
 ' manner, be it in private houses, or places
 ' purposely hired or built for that use, so that
 ' they take special care that nothing be
 ' preached or taught amongst them which
 ' may any ways tend to alienate the hearts of
 ' our people from us or our government, and
 ' that their meetings and assemblies be peace-
 ' ably, openly and publicly held, and all per-
 ' sons freely admitted to them; and that they
 ' do signify and make known to some one or
 ' more of the next justices of the peace, what
 ' place or places they set apart for those uses.
 ' And that all our subjects may enjoy such
 ' their religious assemblies with great as-
 ' surance and protection, we have thought it
 ' requisite, and do hereby command, that no
 ' disturbance of any kind be made or given to
 ' them, under pain of our displeasure, and to
 ' be further proceeded against with the utmost
 ' severity. And forasmuch as we are desirous
 ' to have the benefit of the service of all our
 ' loving subjects, which by the law of nature is
 ' inseparably annexed to, and inherent in our
 ' royal person, and that none of our subjects
 ' may for the future be under any discourage-
 ' ment or disability (who are otherwise well in-
 ' clined and fit to serve us) by reason of some
 ' oaths or tests that have been usually ad-
 ' ministered on such occasions, we do hereby
 ' further declare, that it is our royal will and
 ' pleasure, that the oaths commonly called the
 ' oaths of supremacy and allegiance, and also
 ' the several tests and declarations mentioned
 ' in the acts of parliament made in the twenty-
 ' fifth and thirtieth years of the reign of our
 ' late royal brother king Charles the second,
 ' shall not at any time hereafter be required to
 ' be taken, declared, or subscribed by any
 ' person or persons whatsoever, who is or shall
 ' be employed in any office or place of trust,

' either civil or military, under us, or in our
 ' government. And we do further declare it
 ' to be our pleasure and intention, from time to
 ' time hereafter, to grant our royal dispensa-
 ' tions under our great seal, to all our loving
 ' subjects so to be employed, who shall not
 ' take the said oaths, or subscribe or declare
 ' the said tests or declarations in the aboye-
 ' mentioned acts, and every of them. And to
 ' the end that all our loving subjects may re-
 ' ceive and enjoy the full benefit and advantage
 ' of our gracious indulgence hereby intended,
 ' and may be acquitted and discharged from all
 ' pains, penalties, forfeitures, and disabilities
 ' by them or any of them incurred or forfeited,
 ' or which they shall or may at any time
 ' hereafter be liable to, for or by reason of
 ' their nonconformity, or the exercise of their
 ' religion; and from all suits, troubles or dis-
 ' turbances for the same; we do hereby give
 ' our free and ample pardon unto all non-
 ' conformists, recusants, and other our loving
 ' subjects for all crimes and things by them
 ' committed or done, contrary to the penal
 ' laws formerly made relating to religion, and
 ' the profession or exercise thereof; hereby
 ' declaring, that this our royal pardon and
 ' indemnity shall be as good and effectual to
 ' all intents and purposes, as if every indi-
 ' vidual person had been therein particularly
 ' named, or had particular pardons under our
 ' great seal, which we do likewise declare
 ' shall from time to time be granted unto any
 ' person or persons desiring the same; willing
 ' and requiring our judges, justices, and other
 ' officers, to take notice of, and obey our
 ' royal will and pleasure herein-before de-
 ' clared. And although the freedom and as-
 ' surance we have hereby given in relation to
 ' religion and property, might be sufficient to
 ' remove from the minds of our loving subjects
 ' all fears and jealousies in relation to either;
 ' yet we have thought fit further to declare,
 ' that we will maintain them in all their pro-
 ' perties and possessions, as well of church and
 ' abbey lands, as in any other their lands and
 ' properties whatsoever.

' Given at our Court at Whitehall, the 4th
 ' day of April, 1687, in the third year of
 ' our reign.'

' Ever since we granted this indulgence, we
 ' have made it our principal care to see it pre-
 ' served without distinction, as we are en-
 ' couraged to do daily by multitudes of ad-
 ' dresses, and many other assurances we re-
 ' ceived from our subjects of all persuasions,
 ' as testimonies of their satisfaction and duty,
 ' the effects of which we doubt not but the
 ' next parliament will plainly shew; and that
 ' it will not be in vain that we have resolved to
 ' use our uttermost endeavours to establish li-
 ' berty of conscience on such just and equal
 ' foundations as will render it unalterable, and
 ' secure to all people the free exercise of their
 ' religion for ever; by which future ages may
 ' reap the benefit of what is so undoubtedly for

the general good of the whole kingdom. It is such a security we desire, without the burden and constraint of oaths and tests, which have been unhappily made by some governments, but could never support any. Nor should men be advanced by such means to offices and employments, which ought to be the reward of services, fidelity and merit. We must conclude, that not only good Christians will join in this, but whoever is concerned for the encrease of the wealth and power of the nation. It would perhaps prejudice some of our neighbours, who might lose part of those vast advantages they now enjoy, if liberty of conscience were settled in these kingdoms, which are above all others most capable of improvements, and of commanding the trade of the world. In pursuance of this great work, we have been forced to make many changes both of civil and military offices throughout our dominions, not thinking any ought to be employed in our service, who will not contribute towards the establishing the peace and greatness of their country, which we most earnestly desire, as unbiassed men may see by the whole conduct of our government, and by the condition of our fleet, and of our armies, which, with good management, shall be constantly the same, and greater, if the safety or honour of the nation require it. We recommend these considerations to all our subjects, and that they will reflect on their present ease and happiness, how far above three years, that it hath pleased God to permit us to reign over these kingdoms, we have not appeared to be that prince our enemies would have made the world afraid of; our chief aim having been not to be the oppressor, but the father of our people, of which we can give no better evidence than by conjuring them to lay aside all private animosities, as well as groundless jealousies, and to choose such members of parliament as may do their part to finish what we have begun, for the advantage of the monarchy over which Almighty God hath placed us, being resolved to call a parliament, that shall meet in November next at farthest.

“Quam quidem Regalem Declarationem dicti Domini Regis nunc ultimo mentionatam idem Dominus Rex nunc postea scilicet tricesimo die Aprilis Anno Regni sui quarto supradicto, apud Westmonasterium prædictum in Comitatu Middlesexie prædicto, imprimi et per totam Angliam publicari causavit, et pro magis solemnæ demonstratione, notificatione, et manifestatione gratiæ suæ Regiæ benignitatis et benevolentiae suæ ad omnes ligeos suos in eadem Declaratione ultimò mentionata specificatos, postea scilicet quarto die Maii Anno Regni sui quarto, apud Westmonasterium prædictum in Comitatu Middlesexie prædicto idem Dominus Rex debito modo ordinavit prout sequitur.”

At the court at Whitehall, the 4th of May, 1688. It is this day ordered by his majesty

in council, That his majesty's late gracious declaration, bearing date the 27th of April last, be read at the usual time of divine service, upon the 20th and 27th of this month, in all churches and chapels within the cities of London and Westminster, and ten miles thereabout; and upon the 3d and 10th of June next, in all other churches and chapels throughout this kingdom. And it is hereby further ordered, That the right reverend the bishops cause the said declaration to be sent and distributed throughout their several and respective dioceses, to be read accordingly.

“Et ulterius idem Attornatus dicti Domini Regis nunc Generalis pro eodem Domino Rege dat Curiae hic intelligi et informari, quod post Confectionem prædicti ordinis, scilicet, decimo octavo die Maii, Anno Regni dicti Domini Regis nunc quarto supradicto, apud Westmonasterium prædictum in Comitatu Middlesexie prædicto Willielmus Archiepiscopus Cantuariensis de Lambeth in Comitatu Surriæ, Willielmus Episcopus Asaphensis de St. Asaph in Comitatu Flintiae, Franciscus Episcopus Eliensis de Parochia Sancti Andreæ Holborn in Comitatu Middlesexie, Johannes Episcopus Cicestrensis de Cicestria in Comitatu Sussexie, Thomas Episcopus Bathonensis et Wellensis de Civitate Wells in Comitatu Somersetie, Thomas Episcopus Petriburgensis de Parochia sancti Andreæ Holborn in Comitatu Middlesexie, et Jonathan Episcopus Bristollensis de Civitate Bristol, inter se consuluerunt et conspiraverunt ad diminuendam Regiam Autoritatem, Regalem Prærogativam et Potestatem, et Regimen ejusdem Domini Regis nunc in præmissis, ac ad eundem Ordinem infrigendum et eludendum; ac in prosecutione et executione conspirationis prædictæ, ipsi iidem Willielmus Archiepiscopus Cantuariensis, Willielmus Episcopus Asaphensis, Franciscus Episcopus Eliensis, Johannes Episcopus Cicestrensis, Thomas Episcopus Bathonensis et Wellensis, Thomas Episcopus Petriburgensis, et Jonathan Episcopus Bristollensis dicto decimo octavo die Maii Anno regni dicti Domini Regis nunc quarto supradicto, Vi et Armis, &c. apud Westmonasterium prædictum in Comitatu Middlesexie prædicto, illicitè, malitiosè, seditiosè, et scandalosè, quoddam falsum, fictum, perniciosum, et seditiosum libellum in scriptis, de eodem Domino Rege et Regali Declaratione et Ordine prædictis (prætensu Petitionis) fabricaverunt, composuerunt et scripserunt, et fabricari componi et scribi causaverunt, et eundem falsum, fictum, malitiosum, perniciosum, et seditiosum libellum per ipsos prædictum Willielmum Archiepiscopum Cantuariensem, Willielmum Episcopum Asaphensem, Franciscum Episcopum Eliensem, Johannem Episcopum Cicestrensem, Thomam Episcopum Bathonensem et Wellensem, Thomam Episcopum Petriburgensem, et Jonathanum Episcopum Bristollensem manibus suis propriis respective subscriptum die, et anno, et loco ultimo mentionatis in præsentia dicti Domini Regis nunc Vi et Armis, &c. pub-

licaverunt, et publicari causaverunt; in quo quidem falso, ficto, malitioso, pernicioso et seditioso libello continetur—

‘ The humble Petition of William Archbishop
‘ of Canterbury, and of divers of the suff-
‘ ragan bishops of that province (now pre-
‘ sent with him) in behalf of themselves
‘ and others of their absent brethren, and
‘ of the clergy of their respective Dioceses,

‘ Humbly sheweth

‘ That the great averseness they find in
‘ themselves to the distributing and publishing
‘ in all their churches, your majesty’s late de-
‘ claration for liberty of conscience, proceedeth
‘ neither from any want of duty and obedience
‘ to your majesty : our holy mother, the church
‘ of England, being both in her principles, and
‘ in her constant practice, unquestionably loyal,
‘ and having, to her great honour, been more
‘ than once publicly acknowledged to be so by
‘ your gracious majesty ; nor yet from any
‘ want of due tenderness to dissenters, in rela-
‘ tion to whom they are willing to come to such
‘ a temper as shall be thought fit, when that
‘ matter shall be considered and settled in par-
‘ liament and convocation. But among many
‘ other considerations, from this especially, be-
‘ cause that declaration is founded upon such a
‘ dispensing power, as hath been often declared
‘ illegal in parliament, and particularly in the
‘ years 1662, and 1672, and the beginning of
‘ your majesty’s reign ; and is a matter of so
‘ great moment and consequence to the whole
‘ nation, both in church and state, that your
‘ petitioners cannot in prudence, honour, or
‘ conscience, so far make themselves parties to
‘ it, as the distribution of it all over the nation,
‘ and the solemn publication of it once and
‘ again, even in God’s house, and in the time of
‘ his divine service, must amount to, in com-
‘ mon and reasonable construction.*

“ In contemptum dicti Domini Regis nunc,

* “ The king,” says Kennet, “ was not contented to have this declaration published in the usual manner, but he was resolved to have it solemnly read in all churches, as the political gospel of his reign. The bishops and clergy were of all others the most averse to the subject-matter of the declaration, as being most sensible of the ill design and ill effects of it ; and therefore the court seemed the more willing to mortify these their enemies, and make them become accessory to their own ruin ; and even to eat their own dung, as father Petres proudly threatened, and therefore this order of council was made and published.”

Hume takes notice that when Charles [the second] dissolved his last parliament he set forth a declaration, giving his reasons for that measure, and this declaration the Clergy have been ordered to read to the people after divine service. These orders, says Hume, were agreeable to their party prejudices and they willingly submitted to them. The contrary was now the case.

et Legum hujus regni Angliæ, manifestum, in malum exemplum omnium aliorum in tali casu delinquentium, ac contra Pacem dicti Domini Regis nunc Coronam et Dignitatem suam, &c. Unde idem Attornatus dicti Dominis Regis nunc generalis pro eodem Domino Rege petit advisamentum Curie hic in præmissis et debitum legis processum versus præfatos Willielmum Archiepiscopum Cantuariensem, Willielmum Episcopum Asaphensem, Franciscum Episcopum Eliensem, Johannem Episcopum Cicestresem, Thomam Episcopum Bathonensem et Wellensum, Thomam Episcopum Petriburgensem, et Jonathanum Episcopum Bristolensem fieri ; ad respondendum dicto Domino Regi de et in præmissis, &c.

“ T. POWIS. W. WILLIAMS.”

Att. Gen. My lord, we humbly pray, that according to the rules of the court in such cases, my lord archbishop of Canterbury, and my lords the bishops, may plead to the Information.

Sol. Gen. My lords the bishops are here in custody in the court, upon the highest commitment that can be in this kingdom, to wit, that of the king in council ; and we pray, that according to the course of the court, they may plead to the information presently.

L. C. J. What does his Grace and my lords the bishops say to it ?

Serj. Pemberton. Will your lordship give us leave, who are of counsel for his grace my lord of Canterbury, and the rest of my lords the bishops, to speak a word in this matter ?

L. C. J. Ay, brother, go on.

Serj. Pemberton. That which we have to desire of your lordship and the court, is this ; we have now heard this information read, and it is plain we could know nothing of this before, the warrant of commitment being only in general for a libel ; and this being a case of the greatest consequence, peradventure, that ever was in Westminster-hall (that I think, I may boldly say, it is a case of the greatest consequence that ever was in this court) and it being a matter of this nature, that those great and noble persons, my lords the bishops are here taxed with ; that is, for making a seditious libel, contained in such a petition (as though it was a libel to petition the king,) we do beg this of your lordship that (it being of this great importance) to the end we may come prepared to say what we have against it, we may have an imparlance till the next term.

Mr. Finch. Pray, my lord, favour me with a word on the same side, for my lords the bishops. Your lordship sees now how necessary the trouble we gave you before, in making our objections against the reading of the information was, and what the drift and aim of the king’s counsel was, in the desiring the information to be read first ; for now it is read, what is it that they desire of your lordship ? They desire that my lord archbishop, and my lords the bishops, being in custody, and brought here in custody, they may be

now so charged with this information, as to plead presently. This, my lord, we oppose, and with humble submission we ought to have time to imparle, and a copy of the information, that we may consider what we have to plead to it; for however we come here into court, whether legally or not legally, yet ought we in the one and in the other case, to have time to consider of our defence. And, my lord, till of latter time this practice which the king's counsel now calls the course of the court, was never used, nor was any man required to plead immediately; and, my lord, if the practice of the court has not been antiently so (as I do believe they will scarce shew it to be antienter than a few years last past,) then with humble submission, though the course of the court have been so for some little time past, yet it is not in the power of the court (as we humbly conceive) to make a course in prejudice of all the privileges that the king's subjects are by the antient rules of law intituled to; they cannot make a new law in prejudice of any right or privilege which the subject hath, and call it the course of the court. Now that this which we desire for my lords the bishops, is the right and privilege of the subject, is most manifest; for there might be many defences that a man may have to make to an accusation of this nature, which it is impossible for him to know at the first hearing of an information read, and yet which would be necessary for him to make use of, or at least it would be impossible for him to make use of in such a manner as the law doth allow of and require. It may be the pleas which he has to plead, may be such as that he has not time to put into form; there may be matters upon the hearing the information read, that it would be necessary for him to give answer to, which he knew not of before, and therefore may neither have materials ready, nor be capable of putting them (if he had them ready) into such form as the law requires. They tell you on the other side, that if a man be brought into court by legal process, he may be charged with any information whatsoever; that they are not tied to the fact alledged in the commitment, but finding the party under a legal imprisonment, they can exhibit an information against him for any other offence. Then, my lord, would I fain know which way any man alive can be prepared to make his just and legal defence, for he knows not his accusation; for though he think it may be for that for which he was committed, yet it may prove otherwise, and then he can be no way provided with materials for his defence, but he must lose all advantages which the law gives him for his defence. My lord, if this be the course of latter times, yet you will not take that to be such a law as is binding to all future times; and we are sure the king's counsel cannot shew that this was the antient practice, for that was quite otherwise.

L. C. J. Mr. Finch, you were not here, I suppose, when this question came in debate in this court lately, in the case of a very great

person: it was urged very earnestly and very learnedly by one that stands by you. We upon that debate asked sir Samuel Astry, what the course of the court was? And he told us, that the course of the court (of his own knowledge for all the time that he had sat as clerk of the crown in this court) was, that when any one was brought in custody, or upon a recognizance, they were to plead presently.

Mr. Finch. Sir Samuel Astry has not been here so very long, as to make the practice of his time the course of the court.

L. C. J. But I will tell you what he said further, if you will hear me: he said, he had enquired of Mr. Waterhouse, whom we all know to have been an old clerk in the Crown-office, and he told him, that that had been the practice all his time.

Serj. Pemberton. My lord, I hope the course of the courts of Westminster-hall shall not depend upon the certificate of such a one as Mr. Waterhouse, who is a man, we all know, superannuated, and very defective in his memory.*

Just. Powell. Certainly what they desire for the defendants is very reasonable, for I take the point to be only this: Whether a man may be compelled, being in custody, to plead to an information presently?

Just. Allynbone. Pray, brother Powell, spare me a word in this matter. Mr. Finch, I suppose you labour for what the court will not deny you, that you may have time to plead according to the course of the court. We are not making courses for particular facts, that by my consent we will never do; but if you say such a thing is not the course of the court, and the king's counsel affirm it is, how shall this be determined? And from whom can we take our information to determine what is the course? I am sure there is none of us that are here now, can pretend to tell what the ancient course was; for my part, I declare it, I cannot; and I know no reason there should be any novelty introduced into the court upon any ground or reason whatsoever, nor will I consent to any while I sit here: therefore I desire to know what is the ancient course, and how we shall come to the knowledge of that course, if not by the certificate of those who have been ancient officers of the court?

L. C. J. Nay, that is certain, the court will bring in nothing new in any such case as this.

Just. Allynbone. If that hath not been the ancient course without exception, I am against it; I know no reason my lords the bishops should have any thing new put upon them: on the other side, they must not expect to have the ancient course of the court declined in their case.

Mr. Pollexfen. Pray, my lord, hear me a little in this matter: it is not my desire that any law should be altered for any particular case,

* For what is said of him in the Case of Green, Berry, and Hill, when they were brought up for judgment, see vol. 7, p. 221, of this Collection.

and the course of the court I know is the law of the court; but I humbly crave leave to say, that I take the ancient course of the court to be quite otherwise than what the king's counsel would have it. There may be particular things done now and then, perhaps in particular cases, and upon particular occasions, which will not make what is so done to be the course of the court, nor be a binding rule to you. Now, as to this matter of time or no time, to plead to an information, I remember the time very well, when I and some others that stood at the bar, and wondered when we saw this practice coming in, and thought it a very hard and mischievous thing; for, in truth, the several plots that have been, and the heats of men about these things, have brought in this course: for certain I am, and I dare affirm, there never was any such course here before, neither upon warrant from the chief justice, nor upon recognizance, or any other process, was a man compelled to plead instantly, without having a *Capias* in the regular form, after a contempt for not appearing upon summons. Truly, my lord, we had no interest in the matter one way or other, to make us scruple it any otherwise than as we were concerned that the law and justice of the nation should have its true and ancient current. And this I can assure your lordships, that here was both my lord chief justice Saunders, and Mr. Serjeant Holt, and myself, who taking notice when this was first offered at, to make a man plead immediately, without giving him time to consider what he should plead, could not but say among ourselves, that it was an unreasonable thing; and we were inclined to speak to the court to inform them of the consequence of it, which needs must be very mischievous. Sir Samuel Astry, we know, came to be clerk of the crown in my lord Scroggs's time. We know it is usual and customary for the court to ask what is the course of the court in doubtful cases, and to receive the information from the officers of the court on both sides. If it be on the plea-side, from Mr. Aston; if on the crown-side, from sir Samuel Astry, concerning things of practice; but I did never think that what they reported was final and conclusive to the court: but to make this matter clear, I humbly pray, that you would please to give order for the search of old precedents, how the old practice really hath been: every thing that has been done in hot times, is not to be made a standing rule. If there do any such thing appear to have been done and practised anciently, truly, my lord, I will submit, and say I am under a mighty mistake; but if this which is now urged for the course of the court, is nothing but what the zeal of the times, and heat of persecutions hath introduced, surely that is not fit to be a constant rule for the court to go by; for every one knows, that the zeal of one time may bring in that by surprize upon one man, which, when things are cool at another time, will appear to be plain injustice. We have indeed seen strange things of this kind done before, but I hope to

God they are now at an end, and we shall never see any such thing done hereafter; and as for this particular point, I think it is a wonderful thing in the consequence of it, if the law should be as they would have it. Here is a long information just read over to a man (but whether long or short, as to the main point, it is the same) and you say the course of the court is, he must plead to it immediately. Surely matters of crime that require punishment to be inflicted on men, are of as much consequence and concern, as any civil matter whatsoever; and men are to have their rights in those matters preserved, as well as in other matters, which is all I press: for suppose a man has a special matter to plead; as particularly, suppose it be the king's pardon, I cannot give this in evidence upon a trial after not guilty pleaded, then I ought to plead it. But what if I have it not ready? 'Tis not telling the court of it without shewing of it, that will do; and it may be a man that is taken up, and brought hither in custody, cannot have it ready to shew; but yet then, by this rule a man shall lose the benefit of his plea, by being compelled to answer immediately. But they say, the court will do right: I suppose they will; and my lords the bishops in this case, I believe, do not distrust but that the court will do right; but I never thought the law was brought to that pass, that such things as these were left wholly in the discretion of the court. Certainly imparlances, time to plead, and just preparations for a man's defence, are things that the law has settled, and not left in the discretion of the court: and truly to me it seems all one utterly to take away a man's defence, as to hinder him of the means to prepare for it. My lord, here is an information before you against these noble lords, 'tis a matter of great moment, and though I hope in God there is no great cause for it, yet however, since such persons are concerned, and 'tis a matter of such great weight, I hope you will give us such an imparlance, as if we had this day appeared upon the ordinary process, which is an imparlance untill the next term.

L. C. J. There is a difference between this and that other case: if my lords the bishops had appeared upon the summons, they would have had an imparlance of course; but when they are brought up hither in custody, that mightily alters the case. But that we may not be too hasty in a thing of this nature, let the clerk of the court be consulted with, that we may know what the true course is.

Att. Gen. My lord, we pray sir Samuel Astry may be examined a little about it.

Just. Allynbone. Mr. Pollexfen, I believe the court is unanimous in their resolutions of making nothing new in this case; but pray give me leave to tell you, this is not the first time that this question has come to be agitated in this court since I came hither. Now from whence can the court take their measures to be rightly informed what the practice of the court is, but from the information of the offi-

cers of the court? who by their constant employment, are most capable of knowing what the course is. Now, if you come to offer any thing that may be matter of doubt to the court, concerning the practice of the court, you having known that this thing was controverted before (for so it has been) should have provided yourself with something that must be a reasonable motive for us to doubt; for this has not been only once, but often moved, and our officers have been consulted with concerning this question, which took its rise from such objections as you have made now. Now for you to tell us, that you desire that we would look into precedents, is, methinks, pretty odd. If you had brought us any precedents, it had been something: and withal I must tell you, that you must not reckon the favour of the court, in any particular case, to be the standing rules for the practice and course of the court; but instead of bringing precedents, you only offer your own thoughts, and those would create no doubt in us but what has been before satisfied upon examination of the officers of the court.

Mr. *Pollexfen*. Pray, sir, will you give me leave to answer one word?

Mr. *Just. Powell*. Truly I have not observed that ever this point was started so as to beget a question since I came hither, but only in the cases of the *Quo Warrantos*; and truly in that case I thought it hard they should be denied time to plead, especially the consequence being so fatal.

L. C. J. Yes, yes, brother, it has been several times.

Just. *Powell*. Truly, my lord, I have not observed it, nor do I remember it.

Sir R. *Sawyer*. My lord, I have always taken the distinction, as to these matters, to be this—

Just. *Powell*. But, my lord, if the ancient course of the court hath been to grant an imparlance, and a copy of the information before they plead, I see no reason why my lords the bishops should not have the benefit of that ancient course: for if a man that is sued at law for a two-penny trespass, shall have that advantage as to receive a declaration, and have time to plead what he can to it, why should not my lords the bishops, in a matter of so great a weight, have the same advantage too? But indeed, if the course of the court had been anciently otherwise, I can say nothing to it; for the course of the court is certainly the law of the court.

Just. *Allybone*. Brother Powell, you say well, if they did produce any one precedent to give us occasion to doubt in the matter.

Sir R. *Sawyer*. Pray, good my lord, will you give me leave—

Att. *Gen*. Why, sir Robert Sawyer, will you never have done?

Sol. *Gen*. No, they are so zealous and eager in this case, that they won't permit either the court, or any body else, to speak a word but themselves.

Serj. *Pemberton*. Good Mr. Solicitor, give us leave to answer the objection that the court hath made to us; we would satisfy your lordship where the distinction really lieth, where there has been an opportunity for the party to come in, as by summons or Subpœna, or the like, and he has slipped that opportunity, and so the king is delayed. In that case they always used to put the party upon pleading presently, when he was taken up upon a Capias, and brought in custody; but when there was never any Subpœna taken out (as the case is here) so that the party never had an opportunity to come in and render himself, and appear to answer it according to the due course of law, an imparlance was never yet denied, nor time to plead; and that is the case here.

Sir R. *Sawyer*. My lord, Mr. Serjeant has given you the true distinction, where process has gone out to summon any one to appear to an information, and he hath failed to appear according to the summons, and the prosecutor for the king makes out a Capias; if he be brought in upon that Capias, the ancient course has been so as they say: but for that other matter, where a man comes in upon a commitment at the first instance, and an information is put in just as this is, the same morning, and not before; if they can shew any one precedent of this kind fifteen years ago, I would be contented to yield that they are in the right; but I am sure they are not able to do it. In sir Matthew Hale's time when this was moved, it was refused; and he was clear of another opinion.

Att. *Gen*. I hope now, my lord, we shall be heard a little for the king; and I cannot forbear observing, in the first place, somewhat that these gentlemen have offered at, who are now inveighing against the heat of the times, when a great part of that heat we know who were the inflamers of: but what is all this to the purpose? The question is barely this, Whether when a man is brought into custody into this court, and charged with an information, he shall not by the course of the court be compelled to plead presently?

Sir R. *Sawyer*. To indictments for treason and felony he shall be compelled to plead presently, but not to an information for misdemeanors.

Just. *Powell*. It seems to me very hard he should.

Att. *Gen*. Sir, there are many things that seem hard in law, but yet when all is done, the judges cannot alter the law. It is a hard case that a man that is tried for his life for treason or felony, cannot have a copy of his indictment, cannot have counsel, cannot have his witnesses sworn; but this has been long practised, and the usage is grown to a law, and from time to time it hath been so taken for law; it cannot be altered without a new law made; as it hath been heretofore, so it must be now, till a greater authority alter it; and so, as to the case here at present, if it were a new case, and it was the

first instance, I must confess, I think I should not press it; but if this be the constant practice of the court, and if these gentlemen that now oppose it, some of them ministerially, some of them judicially, have themselves established this practice, they have no reason to wonder that we follow them in it. We do not blame them for what they do now; for men, when they are of counsel, may be permitted to argue for their client contrary to their former opinions; but if these things, by their procurement, have been done thus heretofore, surely without offence we may pray the like may be done now even in the case of my lords the bishops. It is our duty, on behalf of the king, to desire that he may have right done him, as well as they on behalf of my lords the bishops; and to cite precedents were endless, especially of late times; and these gentlemen know them all very well, for they were some of them parties to them themselves, and we can do no more, nor need we, than to put them in mind of their own doings; whether it was so before their time or not, it concerns them to make out and retract their own errors; but in our observation, if ever this was pressed, or insisted upon on the king's behalf, this course has always been pursued.

Sir R. Sawyer. For a precedent, my lord, there is the case of my lord Hollis, where there was given time after time.

Sol. Gen. That was time given by the court to argue the plea to the jurisdiction of the court.

Just. Powell. Mr. Solicitor, have you ever known it contested, and upon debate so ruled, in an information for a misdemeanor, as this case is?

Sol. Gen. If you please to ask sir Samuel Astry, he will inform you how the course has been.

L. C. J. What say you, sir Samuel Astry?

Sir S. Astry. My lord, when I came into this place, there was an antient gentleman that had been long a clerk in the office.

L. C. J. How many years is it since you came into this office?

Sir S. Astry. About a dozen years, I think, my lord; and he sat in this place where Mr. Harcourt does now. He was always accounted a loyal, honest and intelligent man, that is Mr. Waterhouse, who is now alive; and when I came into my office, I took my instructions in a great measure from him, and asked him, what the course of the court was, in such cases which I myself did not understand? For though I had been an attorney twenty years, yet it was on the other side, the civil side; and though I knew some things of my own knowledge, yet I did not so well know the whole practice of the court; and particularly I asked him, what was the course of the court in this case, that is now in question? And he told me, that in all his time and experience, if a man appears upon a recognizance, or was a person in custody, or appeared 'in propria persona,' as a person privileged, he ought to plead at the first instance; and according to that practice, when

sir Robert Sawyer was attorney-general, it was the constant practice; and I am sure he knows it is no new thing.

Sir R. Sawyer. But upon what information, sir Samuel Astry? Were they informations upon misdemeanors?

Sir S. Astry. Yes, several.

Sir R. Sawyer. But was there no process taken out first to call the party in?

Sir S. Astry. Yes, where process was never taken out.

Att. Gen. For how long time is that you speak of your own knowledge, sir Samuel?

Sir S. Astry. About a dozen years.

Serj. Pemberton. It was never done till very lately, but after the party was in contempt for not appearing.

Sol. Gen. I would ask you, sir Samuel Astry, one question: Was the usual process of subpoena first taken out? For Mr. Serjeant Pemberton says it was, do you find any warrant for such a difference as that?

Serj. Pemberton. Do you find any such case as this is?

Sol. Gen. Nay, pray, Mr. Serjeant, give us your favour, and let us ask our questions according to your own doctrine. How do you find the practice to have been as to that distinction they have made?

Sir S. Astry. Sir, I would be very loth to enlarge the precedents of the crown-office further than the truth is; I tell you whence I took my instructions, from Mr. Waterhouse, who was an antient clerk in the office, he has been in that office sixty years, and the instructions I took from him, were, that this was the practice all his time, and it has been asserted all my time. It has been often contested I confess, and Mr. Pollexfen has always opposed it, and moved against it, but it has been always ruled against him: I know it was against his judgment, but the court always over-ruled it.

Sir R. Sawyer. Sir Samuel Astry, can you give any one precedent before you came into this office?

Sir S. Astry. Sir, I can go no farther than this, that I have told you what information I received from him.

Sir R. Sawyer. What is all this but a certificate from Mr. Waterhouse?

L. C. J. We can be informed no otherways than by certificate from the old clerks of the office.

Serj. Pemberton. Alas, he is a child and not fit to do any thing.

Mr. Pollexfen. We all know Mr. Waterhouse very well, he is a very weak man, and alway was so, and there is no depending upon any thing that he says.

Sol. Gen. Pray, my lord, will you hear us a little for the king.

The bishop of Peterborough whispering with sir Robert Sawyer, Mr. Solicitor said to him, 'My lord, you had better look another way, and look towards the court, for there your business lies.'

L. C. J. Well, Mr. Solicitor, what say you?

Sol. Gen. My lord, it appears plainly, that the king is in possession of this privilege, and has been so for these dozen years; for so long the justice of the kingdom towards all the subjects hath run in all the instances of it in this channel; and though it hath been contested as often as Mr. Pollexfen has been of counsel for the defendant, in such cases it has always been ruled against him. He indeed has made his continual claims (sir Samuel Astry says,) he has raised the dust, and made a hue and cry, but it has always gone against him: and I would ask the rest of you, gentlemen, that are of counsel for my lords the bishops (for some, or one of you, I am sure has been concerned in every information that has been exhibited in this court for these nine or ten years last past, I would ask you) whether in any information that you have been concerned in, if the party being brought in upon a commitment, and it was insisted upon by the king's counsel that he should have neither imparlance nor time to plead, that you [he] ever obtained either without the special grace of the court. I know you will not say it ever was; why then should there be more done in this case, than has been done in all other cases these ten years? It is not sufficient to make declamations against the unreasonableness of the practice; for it is but what you have done yourselves, and insisted upon for law; and all those men that upon informations have been compelled to plead, have had injury done them; or else these lords will have no injury by the court's taking the same course. It is true, my lords the bishops are peers, and here are seven of them, and seven lords go a great way; they make a committee, I think, in the house of peers, and a mighty matter is made of it, that this is the case of so many lords! but will you alter the course of the court, because seven of my lords the bishops are concerned in it, and they make a mighty stir about the unreasonableness of the thing? How it can be believed that the law will not give a man time to make his defence. They agree themselves, that if it were in the case of life and death, they must plead presently; and doth not the same reason hold? And may not an argument be drawn *à fortiori*, in the case of a misdemeanor? If I am not to have time when I plead for my life, there is less reason I should have time to answer a trespass: but, my lord, it is not ordinary reason that weighs in the case, it is the course of the court, which is the law of the court that we are contending for: and what is there in this case that should require so much time for my lords the bishops to plead to it? It is charged in the information, that these noble prelates did make a libel which was produced by them, and published in the king's presence; they can easily tell whether they have done this or not done it. What can they plead but the general issue? They talk of special matter to be pleaded, but can they

shew any more that they can say, than what any poor ordinary countryman, if he were here to plead to an information, could say? That is, whether he was guilty or not guilty. These lords can tell whether it be true, that they did publish the paper laid in the information, and then your lordship will acquaint them what will be the consequences of that publication in point of law. We say all this was done at Westminster; there the scene is laid, and it is not an information for an old stale thing done a great while ago, but a thing that was done yesterday, and a thing notorious enough, their contesting with the king about his declaration of indulgence. And as to what Mr. Finch has said, that this is a novel invention and a trick to rob a man of his just defence; sure he forgets who it was that taught us the trick. If it be a trick, we have learnt it from those that tricked before us; and what is it that these lords do desire? They would have an imparlance till Michaelmas term: does, or can your lordship think they ask that which is reasonable? To have six months time to plead not guilty to an information for a libel, and when so many men have been denied it formerly upon the instigation of those very gentlemen that now press so very hard to have it granted, sure they must expect to be denied it too; and all this while these lords lie under this accusation, which is not so trivial a matter as some would make it. I believe my lords the bishops have a desire to be cleared, I suppose it is only their counsel that desire to delay it, upon what ground I know not; I believe they themselves would be glad to remove the imputation, which would be best done by a trial, and the sooner the better: If they have a mind to justify themselves, that is the readiest course for it, and they may do it presently, by pleading not guilty. My lord, I know I am in a great auditory, and abundance of your lordship's time has been taken up already; I press it therefore for the sake of the king, and for the sake of my lords the bishops, we shall else have all these things hang in suspence, and in the air for six months longer; therefore let the matter be put upon a fair issue, so as it may come to a speedy determination. I am sure if the lords be innocent to-day, they will be innocent to-morrow, and if it were my own case, I would desire to have it tried as soon as I could, and therefore I pray they may plead immediately.

Just. Powell. Mr. Solicitor, what do you say to the difference that was taken between a person that was brought in in custody at the first instance, where there is no contempt to the process of the court, and one that comes here by Capias, upon default of appearing at the summons?

Mr. Finch. My lord, if I apprehend them aright, they give us more than we did ask, for Mr. Solicitor has laid it down as a rule, that if a man is taken upon a capias in a mean process, he shall have no imparlance.

Sol. Gen. No, you are greatly mistaken, sir, and I pray don't lay down rules for me.

Mr. Finch. If I am, sir, I beg your pardon, but this I am sure of, if a *Venire Fac* goes out, which is in the nature of a *Subpana*, and the party appear to it, that being the first time he could come into court, you cannot force him to plead to an information, but he has an imparlance of course.

Just. Powell. Methinks it seems very reasonable, that this forcing a man to plead presently should be only a punishment for a contempt of the court, and pray, were my lords the bishops in contempt to the court when they came here to-day? Certainly they were not, for no man is in contempt, but he that, being served with process, disobeys that process; and if my lords the bishops had been served with a *subpana* and had not appeared, then there would have gone out a *capias* to bring them in, and then they would have come in upon a contempt, and then they would have come within the rule.

Sol. Gen. If you have a mind to it, you may ask sir Samuel Astry again.

Att. Gen. If they come in upon bail, they ought to plead presently.

Just. Allybone. Mr. Finch, I'll tell you what sticks with me, truly you could not but be aware that this would be required of you; for this very thing was in debate last term, and you know what rules the officer said was the course of the court, why did you not therefore come prepared with some precedents, to shew us what the course of the court is?

Att. Gen. Truly, my lord, at this rate, we shall keep your lordship here all this afternoon, if these gentlemen will not be satisfied with the rule of the court: and for an answer to what Mr. Justice Powell says, if any riot be committed in the country, and the parties are bound by recognizance to appear here, that is no process of this court, and so consequently there can be no contempt, and yet they must plead presently.

Just. Powell. There is a particular reason for that, because they are bound by recognizance, sir Samuel Astry and others say, that if they come in by recognizance they must plead presently.

Sol. Gen.* But for the thing itself (that the people that hear us may not imagine that this court puts a hardship upon my lords the bishops, more than is done in other cases) it is best to keep the same rule as in all other cases; for when all is done, when justice goes with an equal current, without any regard to one person or other, then every body is safe, and all persons concerned do their duty: so in this case, here be no precedents produced wherein it has been otherwise; then can no person complain but that things go in this case as they do in all other cases; perhaps such a case (as to the fact of it) never happened before; but for the law of it, that is plain, and the same as in all other cases; for

* Mr. Attorney General. Sir W. Williams's MS.

that there may be an information against my lords the bishops, as well as other people, if they make libels, sure it is no doubt at all; and if an information lies against them for it, they are under the same rules as others are: but these gentlemen talk of being surprized, and that this is the first time they have heard of this information; but have we told any news in this information? Was not all that is contained in it, notoriously enough known before? Was not the king's first declaration very well known? Was not his second declaration very well known? Was not his order of council for reading of this declaration very well known? Is not your own petition a thing very well known to yourselves and all the world? Then these being the particular facts of which this information is made up, and we only say you did this fact, and we ask you, did you do it, or did you not? Can there be any great surprize in this? My lord, I cannot see any thing that alters this from the common case, but only their being peers; and since this question has been heretofore under contest, these gentlemen have had time enough to have prepared precedents, to differ this from the common rule, if they could; but since they cannot, we desire they may have the same rule that is in all other cases, and then to be sure all will go right.

L. C. J. Sir Samuel Astry, pray will you tell us, whether ever the court used to grant an imparlance where a person comes in in custody? Or did you ever know, when a person comes in upon a commitment, time was given him to plead?

Serj. Pemberton. Have you ever known it disputed and denied?

Sir S. Astry. My lord, I have known that 'tis in the discretion of the court to grant what time they please.

L. C. J. Is it the course of the court to give an imparlance?

Sir S. Astry. No, 'tis the favour of the court, and if the defendants have at any time shewed a reasonable cause, that they have a special matter to plead, or any other cause allowed by the court, the court has sometimes indulged them so far as to give them time.

L. C. J. But how is the ordinary course, sir Samuel Astry?

Just. Allybone. Ay, for as I said before, things done in particular cases in favour are not precedents.

Sir S. Astry. I have told your lordship the course is this, that any person that appears upon a recognizance, or is taken up by your lordship's warrant, or by a warrant from a justice of peace, or any other way in custody, or any officer of the court that is a privileged person, and that must appear *in propria persona*, must plead presently, if the court upon particular reasons do not give him time; and this I received information of, as the practice of the court, from Mr. Waterhouse, who had been a clerk in the office sixty years.

Sol. Gen. He said so before, but these gentlemen will never be contented, unless they have a new law made for them.

Mr. Pollexfen. My lord, I would not unnecessarily trouble your lordship; but truly this is a case of great concern. And first of all, I think we shall all agree, that what has been used for ten or twelve years past will not make the course of the court, and next I perceive they do not bring any one instance for any proceeding of this sort above ten or twelve years old. But then say they on the other side, why do not you bring precedents that it has gone otherwise heretofore? My lord, that cannot be done, for it is a negative on our side, that this which they desire is not the course of the court: but then, as it is impossible to prove a negative, so the proofs should come on the other side, that this has been done: they ought to shew it if there has been any such thing as a standing rule, or else it shall be presumed an innovation, as being contrary to all reason. But, my lord, because they put it upon us, there is this proof on our side, as much as a negative can afford. In those proceedings that were in the great case of the Habeas Corpus, there was an information against Elliot and others;* they had time given them to plead over and over, so that there is one precedent: and as many of these cases in former times as can be found, will shew that this was always the course. But pray, say they, produce us one instance, that ever there was a man that came in upon a recognizance, that had time to plead. Truly, my lord, I cannot just now tell whether any such instance can be produced, but I verily believe there may be a great many; but I turn it upon them, and that with great reason. With submission to your lordship shew me any man, if you can, above a dozen years ago that had not time allowed him to plead. Ay but, say they, Mr. Waterhouse, an ancient clerk of the crown-office, that has been there these sixty years, hath certified that this hath been the practice of all his time. My lord, we that have been conversant in the business of this court, did all very well know Mr. Waterhouse when he was here, and sat in court in the place of sir Samuel Astry.

Sir S. Astry. No, sir, it was in Mr. Harcourt's place.

Mr. Pollexfen. Well, he executed a place here, and 'tis no matter whether he were master of the office or no; but I think we all knew him very well, he was a man as lame in his business as could be; for there are some men that will never do business well, let them be never so long at it; and he was as weak in the practice of the court and every thing else, as 'tis possible for one that has been bred in an office to be; and at this time he is grown so decrepid and superannuated, that you may as well depend upon the certificate of an old woman, as any thing that he shall say in such a

matter as this: he is now almost fourscore years of age, and has lost that little memory and understanding he had; but if his certificate must be depended upon because of his standing in the office, pray, my lord, let him come hither, and do you ask him what he has to say in this matter.

Sol. Gen. Ay, that is very well indeed.*

Mr. Pollexfen. Good Mr. Solicitor, spare us, certainly there needs not such great haste in this matter, we are upon a business of very great weight and concernment; for you are now making a law for the whole kingdom, in point of practice, in cases of this nature. We do say indeed, that by the reason of the heat and zeal of these last ten years, such a usage has been introduced, but sir Samuel Astry tells you it was opposed, and I hope that neither I, nor the thing will be the worse thought of, because I opposed what I thought an unreasonable and new invention. My lord, I know in the Case of the City of London,† we had time to plead a whole vacation after an imparlance, and were not at all hurried on, as the king's counsel would do in this case. My lord, if they can produce any ancient precedent for it, I will say no more; but there is no case in print in any of our books, that ever I read, or can remember, that countenances such an opinion. A man by this means may lose his just defence, and he has no remedy, nor will it ever be in his power to retrieve it, for he may be brought on a sudden into court upon a warrant, and when he is here, he shall be charged with an information, and presently he must plead not guilty, because he has not time to prepare a plea of any other nature, let him have never so much other special matter or occasion for it. If you please to let this matter be examined what the precedents are, and of what age those precedents are, then perhaps your lordship will get some satisfaction; but otherwise, if the bare certificate of the master of the office is to be a guide to the court what is law, and what is not, we shall be in a very uncertain condition, especially when the matter carries in the very face of it a great deal of unreasonableness and injustice. They on the other side will argue, that it is not more unreasonable than the practice in the case of treason and felony, where persons are compelled to plead instantly. But under favour, my lord, there is no comparison between this case and that, though I know it was always thought a hardship and defect in our law, that a person should be denied time to plead in case of life and death, except he can shew some special matter of law that he has to plead, and then he has always time allowed him to put it into form; and I could never think there was any reason to be given for it, but because the common defences of felons would be little shifts and arts, which would destroy proceed-

* This Speech is obliterated in sir William Williams's MS.

† See this Case, vol. 8, p. 1039.

* See this Case, vol. 3, p. 293.

ings, and make them tedious, and that would be an encouragement to people to commit felony; and besides there is a trust which the law reposes in the court in capital cases, to take care that these men should not suffer upon any little tricks in law; but if you come below treason and felony, the law puts no such hardship upon the defendant, nor reposes such a special trust in the court; but a man may plead any thing he has to plead; and can any man plead before he sees what he is to plead to? And shall the law allow him counsel to prepare his plea, and not allow him time to consult with that counsel about it? These are things, my lord, that truly to me seem unreasonable: but as to the practice and course of the court, I pray your lordship to give order that the precedents may be searched, that you may know what the ancient practice was.

Mr. Finch. Whether you will grant an imparlance now or no, yet I hope, however, you will think fit to give my lords the bishops time to plead.

L. C. J. But Mr. Finch, we have had a certificate from sir Samuel Astry, which truly weighs a great deal with me; he tells you the practice has been so ever since he came here, and that Mr. Waterhouse told him that it had been so all his time, which is sixty years.

Mr. Pollexfen. My lord, there are persons here that will upon their oaths declare, that Mr. Waterhouse has often told them the practice was otherwise, even in his time, and afterwards a long time before this new way of proceeding came in.

Mr. Ince. My lord, if I might have liberty to speak, I can say Mr. Waterhouse has told me—

L. C. J. Pray be quiet, Mr. Ince.

Just. Allynbone. But pray, Mr. Pollexfen, give me leave to mind you how the evidence stands against you; the objections are, that this has been a practice but for twelve years last past: if that be true, I think it goes a great way, for the practice of twelve years is precedent enough, *prima facie*, that such is the practice: for how shall we come to the knowledge of the practice, but from our officer sir Samuel Astry, who has been here examined? And he tells you, that upon his coming into the office, when it could not be so doubtful, as now it seems it is, he took instructions from Mr. Waterhouse: I allow you it is but his certificate, but that must go a great way with the court.

Sir R. Sawyer. Such a practice as this has been always very rare in informations for misdemeanours; and they bring you nothing of any precedent older than sir Samuel Astry's time.

Mr. Finch. Pray, my lord, give me leave to vary the question; I do not now make it a question, whether your lordships should grant my lords the bishops an imparlance, but whether you would think fit to look into the course of the court before that time that sir Samuel Astry speaks of, and take time to consider and search into precedents.

Just. Allynbone. Do you, Mr. Finch, give us any one reason or precedent that may make us doubt, whether this be the course of the court or no? And you could not but be aware of this before, and therefore should have come prepared to make out your objection.

Mr. Finch. Mr. Pollexfen and the rest of the practisers in my lord Hale's time will tell you, that the course was otherwise in his time. Sir Samuel Astry indeed tells you it has been so since his time; but this was one of the points it seems, that he was ignorant of, which made him enquire of Mr. Waterhouse, so doubtful was his practice.

Sir S. Astry. I was an attender upon this court before I came into this office, but it was in another place, on the other side of the court; and therefore was not concerned so much to know what was the course on this side, till I came into this office.

Sol. Gen. These gentlemen differ among themselves, one would have an imparlance, the other only time to plead; I believe truly they cannot tell what they would have; I pray the rules of the court may be kept to.

Sir S. Astry. Here are two clerks that sit by me, that have been a long time in the office, Mr. Harcourt my secondary, and the clerk of the rules, I pray they may be asked their knowledge of this matter.

Att. Gen. Certainly these gentlemen think they have a privilege above all other persons, that they must not be subject to the same rules as others are! We on our parts have taken all the methods that we could to make this matter manifest, and what is it that these gentlemen now propose? They pray you to take time to consider, but have they used the right means of creating a jealousy or suspicion in the court, that the course is otherwise? They can give no instance of it, and all they say is, it is a negative, that this is not the course of the court, but the imparlance that they beg is in the affirmative, surely that they can find proof of it, if it be so. As for my lord Hollis's Case, that is with us, and not against us; let Mr. Pollexfen shew that ever any one of the men, that were brought into court in custody, either had time to plead, or an imparlance.

L. C. J. Sir Samuel Astry says he has given you his opinion, and here are two other clerks of the office that he refers himself to, are you willing that they should be asked?

Serj. Pemberton. Yes, my lord, with all our hearts.

L. C. J. Mr. Harcourt, how long have you been a clerk in the Crown-office?

Mr. Harcourt. About 17 or 18 years, my lord.

L. C. J. How long have you known the practice of the court in this matter, and what is it?

Mr. Harcourt. I cannot charge myself so with particulars from the time of my coming into the office, but for these ten or twelve years past (I remember) it has been as the king's counsel pressed, and as sir Samuel Astry has declared.

L. C. J. What say you, Mr. Sillyard, how long have you known the Crown-office?

Mr. Sillyard. I have been a clerk here about 30 years.

L. C. J. Well, and how has the practice been all your time?

Mr. Sillyard. I have not sat here as clerk of the Rules but a little while, but since I have sat here, I have always observed it to be the practice, that one that comes in custody should plead immediately; it was a thing heretofore that did not so often happen as it hath done here of late, therefore I cannot so well speak it; but it hath fallen out frequently within some years last past, and that hath been the constant course.

Sir S. Astry. When you first came to be Attorney-General, sir Robert Sawyer, I am sure it was so.

Att. Gen. Pray let me ask you, Mr. Sillyard, you say you have known the office thirty years; when you first came to the office, were informations as frequent as they are now, and have been of late?

Sol. Gen. It was so in the case of Mr. Hampden,* when you were Attorney-General, sir Robert Sawyer, he was forced to plead immediately to an information for a misdemeanor, for a crime that perhaps you will say was bordering upon treason.

Sir R. Sawyer. Yes, truly, it wanted but one witness, that was all.

Sol. Gen. But yet the indictment was only for a misdemeanor, and there we struggled and debated the matter, but were forced to give it over, because the course of the court and sir Robert Sawyer, and the then king's counsel, were against us, so it has been by the then unquestionable testimony of sir Samuel Astry for these 12 years last past; and in those 12 years we have had many changes in court, perhaps there may have been twelve Chief Justices and more, with other Judges,† al-

* See this Case, vol. 9, p. 1053.

† Mr. Serjeant Heywood has inserted at the end of his "Vindication of Mr. Fox's Historical Work," Appendix, N^o I. [See, also, Mr. Rose's Observations on Mr. Fox's Historical Work, p. 35, and the Edinburgh Review, July 1809], a very valuable "Historical Account of the Tenure by which the Judges held their Offices under the House of Stuart, and a List of most of those who were removed for political causes;" from which, with his permission, I here insert the following passage:

"In the reign of Charles the Second.

"1. John Archer was appointed a judge of the court of Common Pleas on the 4th of November, 1663, and was removed in the Christmas vacation in 1672, (24 Car. 2.) being then the senior puisne judge, and was succeeded by sir William Ellis. Sir Thomas Raymond says Archer was removed, 'pro quibusdam causis mihi incognitis,' but having a patent 'quam diu se bene gesserit' he refused to surrender

VOL. XII.

tered in that time, they have all affirmed and

it without a Scire Facias. Notwithstanding he was prohibited from sitting in the court or exercising his office elsewhere, he continued to be a justice, and received a share in the profits of the court as to fees and other proceedings, and his name was used in fines, &c. when Rushworth wrote, and until his death. Sir William Ellis sat in court on the first day of Hilary Term, 1672; and on the same day, sir Hugh Windham, who was the puisne baron of the Exchequer, also took his place as senior judge of the Common Pleas, Wild being removed from the Common Pleas into the King's Bench, to fill up the vacancy occasioned by Morton's death. These removals were made at the desire of sir Edward Thurland, who chose rather to be a baron of the Exchequer, than a justice of either of the other courts, and the chancellor in his speech complimented him upon his modesty, 'in that he chose rather to be serviceable than rich.' [T. Ray. Rep. p. 217. Sir T. Jones Rep. p. 42. Rushw. iii. p. 1365.]

"2. Sir William Ellis was appointed one of the justices of the court of Common Pleas in 1672, removed in the long vacation in 1676, and succeeded by sir William Scroggs, who was sworn in on the first day of Michaelmas Term. Sir William Ellis was afterwards made one of the justices of the court of King's Bench, with presidency to sir Thomas Jones and sir William Dolben, justices of that court, because they were 'put in after his turning out;' but this was only signified verbally by the king, and not expressed in his patent. He died in that situation on the 3d of December, 1680, aged 71; though upon the duke of York's return from Scotland in that year, the cavaliers were displeased that he was not turned out. [Freem. Rep. p. 212. T. Ray. Rep. p. 251. 407. Macph. St. Pap. i. p. 105.]

"3. Sir Thomas Twisden, was appointed a justice of the court of King's Bench in 1660, and in 1678, his attendance was dispensed with on account of his great age. He still continued to be a judge, and, as was said, had a pension of 500*l.* a year. Sir William Dolben was appointed a judge of this court, and sat, instead of Twisden, till his death, which happened in 1682, he died aged 81 years. Sir William continued to be judge of this court after Twisden's death, but only for a short time before he was himself removed. Noble, in his Memoirs of the Protectoral House of Cromwell, says of Twisden, that 'being too virtuous for the place he held he received his *quietus*, after sitting 'upon the bench 20 years.' [T. Ray. Rep. p. 475. Mod. Rep. iii. p. 4. Noble, p. 438.]

"4. Sir Robert Atkins, was made a justice of the court of Common Pleas in 1672, [E. 24 Car. 2), and displaced upon the day before Hilary Term in 1679, by writ under the great seal. He was succeeded by sir Thomas Raymond, a baron of the Exchequer. The cause of his removal probably was that he was con-

S

allowed this course; and if I then make it out,

nected with lord Russell and the Whigs, who withdrew from the council board about this time, being displeased with the king and the majority of the council for treating lightly the Popish Plot. In the New Biographical Dictionary it is said, that 'from a foresight of very 'troublesome times, he resigned his office, and 'retired into the country.' At the Revolution he was made chief baron of the Exchequer. [T. Jones. Rep. p. 42. Mod. Rep. iii. p. 4. Comp. Hist. iii. p. 379.]

" 5. Sir William Wild was appointed a justice of the King's Bench in 1672, (24 Car. 2), and sworn in upon the day before Hilary Term began, and removed in 1679. (P. 31 Car. 2). His successor was sir Francis Pemberton. [T. Jones. Rep. p. 43. Show. Rep. ii. p. 23. Keb. Rep. iii. p. 102.]

" 6. Francis Brampton, a baron of the Exchequer, was appointed in the year 1678. (T. 30 Car. 2), and removed in April 1679. And was succeeded by sir Edward Atkyns. [Ray. Rep. p. 244.]

" 7. Sir Francis Pemberton, a justice of the King's-bench, was appointed in April, and sworn in the 5th of May, 1679, was removed in the month of February following, (32 Car. 2.) and succeeded by sir Thomas Raymond. He practised again in all the courts of Westminster hall, but without the bar, as a serjeant. [Raym. Rep. p. 251. Show. ii. p. 33, 94.]

" 8. Sir William Scroggs, chief justice of the King's-bench, was appointed in 1678, (T. 30, Car. 2.) and removed in 1681, in the Easter vacation, (33 Car. 2.) being succeeded by sir Francis Pemberton. In 1680, the House of Commons fell upon the duke of York's friends, and among the rest lord chief justice Scroggs; they resolved that he should be impeached of high treason, and articles were prepared and ordered to be sent to the lords, but the king prorogued the parliament on the 10th of January, and dissolved it on the 20th. And in the Easter term following, Scroggs who had declined to sit in court for several preceding terms, was discharged from his office, in order that Fitzharris might be tried, but was recompensed with a pension. [Vent. 1. p. 329, 354. Show. ii, p. 155. Macph. Stat. Pap. 1, p. 106. Vol. 8, p. 430, of this Collection.]

" 9. Sir Francis Pemberton, chief justice of the King's-bench, was appointed in 1681, for the trial of Fitzharris, and made chief justice of the common pleas on the day before the first day of Hilary term, 1683, (34 Car. 2.) in the room of sir Francis North, who on the death of lord Nottingham about Christmas had been appointed keeper of the Great Seal. Sir Thomas Raymond says, he changed to the court of common pleas at his own desire, "for that it is a place though not so honourable, yet of more ease and plenty, as the lord keeper said in his speech to Saunders." But it is probable that he was compelled to make the change in order that sir Edmund Saunders

that in the time of all judges within our re-

might preside at the decision of the great Quo Warranto case against the city of London, in which he had drawn all the pleadings for the crown. The demurrer in that cause was filed in the same term, on the first day of which he took his seat as his successor, namely (Hilary Term, 34 Car. 2.) 1683; he died in the next Trinity term, 19th of June, 1683; and sir George Jeffries succeeded him, and sat on the bench in Mich. Term, 1683. [Show. ii. p. 232, 311. T. Ray. p. 478. T. Jones, p. 231, 233. Mod. 3. p. 38. V. 3, p. 1086, in this Collection.]

" 10. Sir Francis Pemberton, made chief justice of the common pleas in Hilary term, 1683, (35 Car. 2.) was removed in the long vacation of that year, and sir Thomas Jones a justice of the court of King's-bench succeeded him, and sat in court at the beginning of Michaelmas term, 35 Car. 2. The removal of sir Francis Pemberton has been supposed to be occasioned, by the honourable manner in which he had conducted himself, when presiding at the trial of lord Russel on the 13th of July preceding, or, as Kennet says, by his not "being able to go into all the new measures of the court." His fate is rather singular, he filled three judicial offices, was removed from each, returned twice to practise at the bar, and died at last a puisne serjeant. [T. Jones, p. 234. Compl. Hist. iii. p. 416.]

" 11. Sir William Dolben, a justice of the King's-bench, was appointed in 1677, (29 Car. 2.) and received a supersedeas to his commission on the 20th of April, 1683, (35 Car. 2.) being succeeded by sir Francis Wythens, who was sworn in on the first day of Easter term, the 25th of April, in the same year. After the revolution he was restored to his office. A message was sent from the lords on the 19th of February, 1688, by serjeant Dolben, so possibly he had returned to the bar. [T. Ray. p. 496. Show. ii. p. 282. Mod. iii. p. 253. Lords' Journ. xiv. p. 129.]

" 12. Thomas Street, was made a baron of the Exchequer in 1681, (33 Car. 2.) sworn in the 23d of April, and was discharged in 1684. He was succeeded by sir Robert Wright, but appears to have been a justice of the King's-bench in (T. 4. Jac. 2.) 1688. [T. Ray. p. 431. Mod. iii. p. 220.]

" In the reign of James the Second.

" 1. Sir Creswell Levinz, was made a justice of the Common Pleas in 1680, (Hil. 32 Car. 2.) and being removed in 1685, two days before the end of Hilary term, (1 and 2 Jac. 2) was succeeded by sir Edward Lutwyche, as is said in 2 Shower. The removal was by supersedeas under the Great Seal, and he returned again to the bar where he continued to practise so late, as Trin. 8 Will. 3. and his reports down to that time are published. [Lev. ii. p. 257, 260. Show. ii. p. 471.]

" 2. William Gregory, made a baron of the Exchequer, in 1679, was removed in the be-

membrance, it has gone thus, then there are sufficient precedents in the matter.

Sir R. Sawyer. But, my lord, I desire to

ginning of 1685, (2 Jac. 2.) and on February the 13th his place was supplied by sir Thomas Jenner. At the revolution he was made a justice of the King's-bench. [Comp. Hist. iii. p. 444. Mod. iii. p. 253.]

"3. Sir Thomas Jones made chief justice of the Common Pleas in 1683, (35 Car. 2.) was discharged the day before Easter term in 1686, (2 Jac. 2.) and succeeded by sir Henry Bedingfield. The cause of his removal was, notwithstanding the application of the king, his positively refusing to support the dispensing power of the crown. [Skin. p. 251. Show. ii. p. 471. Mod. iii. 99. Comp. Hist. iii. p. 451. See also Reresby's Memoirs, p. 233.]

"4. William Montague, appointed chief baron of the Exchequer in 1676, (28 Car. 2.) was removed in Easter term, 1686, (2 Jac. 2.) and succeeded by sir Edward Atkyns one of the barons of that court. This removal was occasioned by his refusal to support the dispensing power. [Show. ii. p. 471. Mod. iii. p. 99.]

"5. Sir Job Charlton, was chief justice and one of his majesty's council at Ludlow for the marches of Wales, with which he had a pension because he did not practise at the bar. Sir George Jeffryes being Recorder of London, and desirous to enjoy his place, prevailed upon him, contrary to his inclination, to become one of the justices of the Common Pleas in April, 1680, and then obtained the appointment with the same pension, though he still continued to practise, and to be Recorder of the City of London. This is one of the signal frauds in the public revenue mentioned by lord keeper North. Sir Job Charlton was removed in 1686 for resisting the dispensing power, but upon his petition was replaced in his former situation with a patent of precedency as he had been a judge, and to wear a judge's robe at Chester. He was succeeded according to 2 Shower's Reports by — Powell. [Comp. Hist. iii. p. 391. Show. ii. p. 94. Dalr. Mem. App. to 1. Part ii. p. 103. Mod. iii. p. 99. Show. ii. p. 471.]

"6. Sir Edward Nevill, was made a baron of the Exchequer in the long vacation 1685, (1 Jac. 2.) and was removed in the Christmas vacation of 1686, for resisting the claim to the dispensing power, and was succeeded by sir Thomas Jenner. At the restoration [revolution] he resumed his seat in that court. Show. ii. p. 434, 436. Skin. p. 237.]

"7. Sir Edward Herbert, was made chief justice of the King's Bench in the long vacation of 1685, (1 Jac. 2.) and removed into the Common Pleas and made chief justice of that court, on the 21st of April, 1687, (P. 3. Jac. 2.) [Show. ii. p. 434. Mod. iii. p. 125. Comb. p. 47.] The removal of this judge, and sir Francis Wythens from the same bench, forms one of the most serious charges against James the second. In prosecution of his arbitrary and bigotted designs, he had deemed it neces-

know, whether that were the ancient course, Mr. Solicitor?

Sol. Gen. They that make the objection

sary to have a well disciplined standing army at his command, and for the purpose of keeping his soldiers in a state of strict subordination to their officers, and enforcing a prompt obedience to his commands, had determined to revive an obsolete statute*, and a soldier of the name of Beale, (or Dale) was indicted for deserting, tried at Reading, convicted, sentenced to be hanged, and respited. [Inst. iii. p. 86. Rep. vi. p. 27. Mod. Rep. iii. p. 124. Show. Rep. ii. p. 511.] The king was extremely anxious that the sentence should be put in execution at Plymouth, where the troops were in the garrison, to which the prisoner belonged, that his example might make a stronger impression upon the soldiers there, as well as upon the army in general. For this purpose the attorney general, on Saturday the 15th of April in Easter term, 1687, moved in the court of King's Bench, where sir Edward Herbert presided, and Wythens, Powell and Holloway were justices, (all of whom, it is observable, were removed from that bench within little more than a year afterwards) that execution should be awarded against the prisoner, and that he might be executed at Plymouth. The chief justice in some heat refused the motion, as irregular, the prisoner not being before the court. The attorney general then moved for and obtained a Habeas Corpus to bring up the prisoner, and on Tuesday the 18th of April it was moved again. The chief justice and Wythens were of opinion, that the law did not authorize the court to make the order, for the prisoner could be executed only in the proper county where the trial and conviction was, or in Middlesex where the court of King's Bench sat. The order being refused, the prisoner was committed to the prison of the King's Bench. But James was determined to carry his point,† and on the 20th of April, two days afterwards, sir Francis Wythens was removed, and sir Richard Allibone appointed in his room, and on the

* "The statute is not mentioned in either of the reports of the case, but the prosecution must have been founded upon either the 7 H. 7. c. 1, or the 3 H. 8. c. 5. See Co. Rep. vi. p. 27. 3 Instit. p. 86." Heywood.

† "The extreme anxiety of James about his army may be traced in a case, which occurred previously to that mentioned above. Browne was an attorney, and being employed by one Corbet, had arrested a soldier without leave, and both of them had been committed to the custody of a messenger for so doing. They were brought into the King's Bench by Habeas Corpus in the Michaelmas term, 2 Jac. 2. but the warrant being under the hand of the king, without any seal, or mention of any officer, it was held to be illegal, and they were discharged.—Rose v. Browne, and others, Show. Rep. ii. p. 484." Heywood.

ought to prove it to be otherwise of old ; but I

21st, sir Edward Herbert was obliged to change situations with sir Robert Wright, who had been appointed chief justice of the court of Common Pleas in the preceding term. On that same day, so indecently anxious was the king, sir Robert Wright took his seat, as chief justice, Holloway and Powell justices being also on the bench, but sir Richard Allibone not making his appearance, and the prisoner being again brought up, an order was granted for his execution at Plymouth, which was accordingly carried into effect.

" 8. Sir Francis Wythens was made a justice of the King's Bench in 1683 ; removed in 1687, (E. 3 Jac. 2.) on the 26th of April, for the same reason as sir Edward Herbert, and succeeded by sir Richard Allibone. He came on the next day to Westminster-hall, and practised as a serjeant. In the year 1680 he had been expelled the House of Commons for preferring a petition to the king, against the right of the people to petition, and was excepted out of the general act of indemnity after the Revolution. [Show. ii. 512. Comp. Hist. iii. p. 385. 468. 557. Wynn. p. 37.]

" 9. Sir Richard Holloway was appointed a justice of the King's Bench in the long vacation, 1683, (35 Car. 2.) and removed in Trinity vacation, 1688, (4 Jac. 2.) for his honest conduct in the trial of the seven bishops ; and succeeded by sir Thomas Powell, a baron of the Exchequer. [Skin. p. 122. 486. Mod. iii. p. 239. Comb. p. 95.]

" 10. Sir John Powell was appointed one of the justices of the King's Bench in 1687, and removed in Trinity vacation, 1688, for the same reason as sir Richard Holloway ; and was succeeded by sir Robert Baldock. At the Revolution he was made a justice of the Common Pleas. Comp. Hist. iii. p. 486. Mod. iii. p. 239. Comb. p. 95.]

" 11. Sir Christopher Milton was a Catholic, and appointed one of the justices of the King's Bench in April, 1687 ; and in July, 1688, he had a writ of ease, for which the ostensible reason was his great age and infirmities ; but they must have come upon him suddenly, for he was made a baron of the Exchequer only in Easter term, 1 and 2 Jac. 2. He was removed in good company, with Holloway and Powell. Perhaps it might be thought that, however strong his wishes to serve the prerogative and further the royal cause, it might not be prudent to leave him the senior puisne judge. He was succeeded by sir Thomas Jenner, a baron of the Exchequer. [Comp. Hist. iii. p. 468. 486. Skin. p. 521.]

" 12. Sir Richard Heath was made a serjeant in 1683 ; appointed one of the barons of the Exchequer in April, 1686 ; and removed the 3d of November, 1688. He was succeeded by John Rotherham, whose call to be a serjeant is no where recorded. [Comp. Hist. iii. p. 451. Beatson's Pol. Ind. Wynne, p. 37. note.]

" 13. Charles Ingleby was a Catholic, and

will name sir Robert Sawyer another case, and

made a baron of the Exchequer in Trinity vacation (4 Jac. 2.) 1688. He was removed November the 3d, in the same year ; and the vacancy does not appear to have been filled up before James abdicated the throne." Mod. iii. p. 239. Beatson.

With respect to Street, Beatson (who, however, as Mr. Serjeant Heywood observes, is by no means always correct as to such matters) represents his appointment of Baron of the Exchequer to have been made April 21, 1681, and revoked October 28, 1684 ; and that on October 29, 1684, he was made a puisne judge of the Common Pleas. I speak of the first edition of Beatson, which mentions no more of Street. But I have in my custody [August, 1811] a MS. Collection of Reports made by Street himself, which Mr. Hargrave has lent to me : and from the contents of this I infer that Street was a judge of the Common Pleas, Mich. 36 Car. 2. Trin. 1 Jac. 2, and also Trin. 4 Jac. 2.

It appears from the following passage in Narcissus Luttrell's MS. " Brief Historical Relation," &c. that the removal of Jones, Levinz, and Montague was expected within a few days after the accession of king James.

" Feb. 14, 1685. A proclamation by his majesty hath been published, reciting that whereas the commissioners of the treasury to his late majesty, had, on the 5th instant (but the day before his majesty died) contracted and agreed with three persons for three years for the whole duty of excise, rendering the rent of 550,000*l.* per annum ; and that the said contract is good for that part of the excise which was to determine by his late majesty's death, notwithstanding the same ; he did command the said persons to collect the same and pay their rent, and all his subjects to pay the same.

" His majesty (as is said) advised with his judges about it, and four of them were of opinion the contract was not good in law ; they were the lord chief justice Jones, Mr. Justice Levinz, lord chief baron Montague, and Mr. Baron Atkins ; since which, some are apt to think they will have their quietus sent them."

I find by the Commons' journals, that on Friday, December 17, 1680, the House having been resolved into a committee of the whole house, Mr. Powle reports from the committee of the whole house, That the committee having taken the matters to them referred into consideration, had agreed upon several resolves ; which he read in his place, and afterwards delivered them in at the clerk's table, where the same were read ; the second of which is as follows :

Resolved, " That it is the opinion of this committee, that the house be moved that a bill be brought in, that the Judges may hold their places and salaries *quam diu se bene gesserint.*"

The above resolution being, together with

that is the case of sir Samuel Barnardiston, which was the case of a very light libel too, but received a heavy fine to plead immediately, and it cost him 10,000*l.* fine.

L. C. J. Well, gentlemen, have you done on either side?

Serj. Pemberton. If your lordship will please to give us time till to-morrow morning, we will come hither by rule of court, and bring you some certificates and affidavits, or else some precedents, that we hope will satisfy your lordship in this matter.

L. C. J. No, brother, we cannot do that; the question is, what the course of the court is? We have an account of that from sir Samuel Astry, for twelve years of his own knowledge, and from Mr. Waterhouse by him for sixty years; but for Mr. Waterhouse they except against him, and say he was a person that was always lazy and did not so well understand his business, and now is superannuated: that is

the others, read a second time, and a motion being made, that the words "hereafter to be named and appointed," be inserted after the word "judges," and before the word "may," and that the words "and also to prevent the arbitrary proceedings of the judges," be added at the end; which being agreed to by this house:

Resolved, "That this house doth agree with the committee, That a Bill be brought in, that the Judges, hereafter to be made and appointed, may hold their places and salaries *quam diu se bene gesserint*; and also to prevent the arbitrary proceedings of the Judges."

No such bill, however, was passed into a law, till the statute of 12 and 13 William 3.

Concerning the constitution of the Scots Judges during this period, Mr. Hume, in his Commentaries, after deducing the history of the court of justiciary to the year 1671, says:

"At this period, it was judged proper by his majesty, and certainly not without sufficient reasons, to throw the whole of this department into an entire new and more provident order; such as might be followed with more honour and authority, and a higher security for the qualifications and good deportment of the Judges, than under those occasional and discretionary nominations of Justices-depute and assessors. With this salutary purpose, on considering a report made to him by certain counsellors, with whom he thought proper to advise concerning the best means of attaining this important object, his majesty, on the 11th of January, 1671, issued a commission of justiciary in a new form, and purporting to be intended as a model of all commissions for the future; and whereof the substance, along with a set of articles subjoined to it, for the regulation of criminal process, was therefore immediately transferred into a law,—that part of the statute 1672, c. 16, which has for title, *Concerning the Justice Court*. This act suppresses the office of justice-depute, and

said, but is but *gratis dictum*, perhaps it may be so, perhaps not; and they have offered to examine Mr. Ince about some opinion that he has had from this Mr. Waterhouse: it may be he may have asked him some question that may lead to it, and he may have given him some slight answer; but then here are these two persons, Mr. Harcourt and Mr. Sillyard, and the one has been a clerk these sixteen or seventeen years, and the other has known the office thirty years, though there were not heretofore so many informations of this nature and kind as now of late, but still they say, that a person that comes in upon a commitment, or a recognizance, shall never have any imparlance.

Sol. Gen. Can they give any one instance that has any the least shadow to the contrary?

Mr. Pollexfen. My lord, if we had time, we hope we should be able to satisfy you in this matter.

Sol. Gen. You have had time enough to

orders that the criminal court shall consist of five of the lords of session, added to the justice-general and justice-clerk; of which the justice-general, and in his absence, the justice-clerk to be president, and, in default of these, any one of their number, chosen by themselves.

"Whether the new judges were to hold their places for their lives, or during the pleasure only of the king, the statute did not express. The commission of January 1671, which in substance the statute ratifies," [I do not find, in the 'act concerning the Justice Court,' any specific reference to the commission of January 1671, or any mention of it: but from what Mr. Hume says, I conclude, that the provisions of that act, so far as they extend, are in conformity with the commission,] "was, however, to the persons there named, '*pro omnibus eorum vitæ diebus*.' But it was otherwise with the next commission, that of the 19th of July, 1675, which was only to subsist "*durante nostro bene placito*:" and such also was the tenor of the three succeeding commissions; of the 18th November 1678, 20th April, 1685, and 18th July, 1687; which last, moreover, for reasons which sufficiently appear in history, indulged the judges with a dispensation as to the taking of the test oath, or any other but the oath *de fidei*. In pursuance, accordingly, of the prerogative thus claimed by his majesty, several judges were removed and restored at pleasure, in those jealous and arbitrary times. At the revolution, therefore, it was made an article of the claim of right, "that the changing of the nature of the Judges gifts *ad vitam aut culpam* into commissions *durante bene placito*, is contrary to law." In consequence, no such discretion is reserved in the next commission, that of the 27th January, 1690, which is the last of those general commissions."

As to Ireland, see the books referred to in this Collection in the Cases of Price and others, and Cavenagh and others, A. D. 1689.

prepare yourselves for this question, if you had thought you could do any good in it.

L. C. J. Would the course of the court be otherwise to-morrow than it is to day? We have taken all the care we can to be satisfied in this matter, and we will take care that the lords the bishops shall have all justice done them, nay they shall have all the favour by my consent that can be shewn them, without doing wrong to my master the king; but truly I cannot depart from the course of the court in this matter, if the king's counsel press it.

Att. Gen. My lord, we must pray your judgment in it, and your direction, that they may plead.

L. C. J. Truly, I think they must plead to the information.

Att. Gen. Sir Samuel Astry, pray ask my lords whether they be Guilty or Not Guilty.

Then his Grace the Lord Archbishop of Canterbury stood up, and offered a Paper to the court.

L. Arch. of Canterbury. My lord, I tender here a short plea (a very short one) on behalf of myself and my brethren, the other defendants; and I humbly desire the court will admit of this plea.

L. C. J. If it please your grace, it should have been in parchment.

Sol. Gen. What is that my lord offers to the court?

L. C. J. We will see what it is presently, Mr. Solicitor.

Bish. of Peterb. I pray, my lord, that the Plea may be read.

Sol. Gen. But not received.

Att. Gen. No, we desire to know what it is first.

Sir R. Sawyer. Mr. Attorney, if they will plead, the court sure is obliged to receive it.

L. C. J. If it is a plea, your grace will stand by it.

L. Archbish. of Cant. We will all stand by it, my lord: it is subscribed by our counsel, and we pray it may be admitted by the court.

Serj. Pemberton. I hope the court will not deny to receive a special Plea, if we offer one.

L. C. J. Brother, let us hear what it is.

Sol. Gen. Read it if you please, but not receive it.

Clerk reads the Plea; which in English is thus:

‘THE BISHOPS’ PLEA.

‘And the aforesaid William archbishop of Canterbury, William bishop of St. Asaph, Francis bishop of Ely, John bishop of Chichester, Thomas bishop of Bath and Wells, Thomas bishop of Peterborough, and Jonathan bishop of Bristol, being present here in court in their own persons, pray oyer of the information aforesaid; and it is read to them, which being read and heard by them the said archbishops and bishops, the said archbishops and bishops say, that they are peers of this kingdom of England, and lords of parliament, and each of them is one of the

‘peers of this kingdom of England, and a lord of the parliament, and that they being (as before is manifest) peers of this kingdom of England, and lords of parliament, ought not to be compelled to answer instantly for the misdemeanour aforesaid, mentioned in the said information exhibited here against them in this court; but they ought to be required to appear by due process in law issuing out of this court here upon the information aforesaid, and upon their appearance to have a copy of the said information exhibited against them, and reasonable time to imparle thereupon, and to advise with counsel learned in the law, concerning their defence in that behalf, before they be compelled to answer the said information: whereupon, for that the said archbishop and bishops were imprisoned, and by writ of our lord the king, of Habeas Corpus, directed to the lieutenant of the Tower of London, are now brought here in custody, without any process upon the information aforesaid issued against them, and without having any copy of the said information, or any time given them to imparl, or be advised, they pray judgment, and the privilege of peers of this kingdom, in this case to be allowed them; and that they the said archbishop, and bishops, may not be compelled instantly to answer the information aforesaid, &c.

ROBERT SAWYER.

HEN. FINCH.

HEN. POLLEXFEN.’

Att. Gen. My lord, with your lordship's favour, this, in an ordinary person's case, would perhaps be thought not fair dealing, or that which (it being in the case of these reverend prelates) I shall not now name; to make all this debate and stir in a point of this nature; to take the judgment of the court after three or four hours arguing, and when the opinion of the court has been delivered, then to put in a plea to the jurisdiction of the court—

Sir R. Sawyer. It is no such plea.

Att. Gen. It is so in effect: but certainly it is such an irregularity, and such an unfair way of proceeding, as would not be endured in an ordinary case; and I hope you will give so little countenance to it, as to reject it, and make them plead according to the usual course and way of proceedings. Certainly a plea of this nature, after so long an argument, would be reckoned nothing but a trick.

Serj. Pemberton. We hope the court and you are not of one mind, Mr. Attorney, in this matter; we desire the court to receive the plea.

Att. Gen. With submission, the court is not bound to receive pleas that are put in purely for delay, as this is; for the judgment of the court has been already given in the very matter of this plea; and for rejecting a plea, it is done every day; if a man puts in a meer trifling dilatory plea, the court may reject it. Does this plea contain any thing in it, but what has been argued and debated pro and con,

and settled by the court already? If they will put in any plea in chief they may, but such a plea as this, I hope shall not have so much countenance as to be received by the court.

Mr. *Pollexfen*. Do you demur to it? if you please, Mr. Attorney, we will join in demurrer with you.

Att. Gen. No, there will be no need of that.

Sol. Gen. Surely the court will never give so much countenance to it, as to receive it.

Mr. *Finch*. If you will please either to reply or demur, Mr. Solicitor, we are here to maintain the plea.

Sol. Gen. If you were here, you would say the same thing that we do. My lord, this plea is, that my lords the bishops are not bound to plead instantly; so that 'tis not a question, whether they ought to answer, or not to answer; but whether they ought to answer immediately. And what do they say more? They would have an imparlance, and time to consult with their counsel what they shall plead, which is all but one and the same thing in writing, which they have discoursed all this day. And what is the reason they give for this? They induce it thus: these, my lords the bishops, are peers of the realm, and so ought not to be compelled to plead immediately: this, if I mistake not, is the sum of their plea. Now pray, my lord, what sort of plea is this? It is not a plea to the jurisdiction of the court, though it do in a sort decline the justice of the court. Is it a plea in abatement? No, it is not; for it is only to gain time to plead. And do they now offer any thing more for themselves, than what was said by their counsel before? They write they are peers of the realm, and that such is the privilege of the peers, that they ought to have an imparlance, and time to plead, and that they ought not to answer presently. My lord, this matter that they write, was said by their counsel, and hath been long agitated in the court already: your lordship, and the court, have given your judgment, and we know your lordship and the court will not admit of tricks* to delay the king's causes. We all know that the term is a short term; and what I said in the beginning upon this matter, I say again, it is the interest, and for the honour of my lords the bishops (if they understand their own interest, and value their honour) to have this cause tried as soon as may be; but this trifling and tricking† is only for delay and must disparage their cause: for what issue can be taken by the king

* In sir William Williams's MS. the word 'tricks' is obliterated, and the phrase 'such trivial delays' is substituted.

† In sir William Williams's MS. the words 'and tricking' are obliterated, and the preceding phrase 'it is the interest and for the honour of my lords the bishops, if they understand their own interest and value their honour' is altered so as to stand thus: 'it is the interest, and for the honour of my lords the bishops, and of value to their honour.'

upon this plea thus offered? Certainly none. And if we should demur, what will be the end of that, but only to gain time to slip over the term? If there were any thing worth consideration in this plea, and that had not been already debated and settled, then it might concern us to give some answer to it; but we have spent three hours, by my watch*, in the dispute, and the matter having been over-ruled already, it is time to have an end of it. Sure the court will never be so treated by these persons that are of counsel for my lords the bishops, for it cannot be thought that this kind of delay proceeds from my lords the bishops themselves; and whether the court will be so served, we submit it to your lordship. Certainly you will not receive such a plea as this, especially it being in paper, you will never countenance such a practice, so far as to give these lords time to trifle with the court.† If any such thing as a plea be tendered to the court, it ought to be in parchment; and if they would have an imparlance, there ought to have been an entry of a 'petit licentiam interloquendi' upon the roll. The entry of this writing and to advise upon it will be a blemish to your roll, for this in effect is no more than a prayer of an imparlance, which when grantable, ought to be entered of course, together with such prayer upon the roll, and you take it of course; but if it be not of course, it cannot come in by way of plea, it must be by suggestion upon the roll, and a 'Conceditur' entered. If this be admitted as a precedent, every man hereafter that comes in upon an information, will take advantage of it, and plead such a plea as this is, and thereby gain time. If you grant an imparlance in this case upon this plea, you must grant an imparlance in every case. Certainly the law is not to be altered; the method of proceeding ought to be the same in every case. And I hope you will not make a particular rule in the case of my lords the bishops, without a special reason for it.

Serj. *Pemberton*. We put in this plea, my lord, and are ready to abide by it; and we say that, according to the course of the court, it ought to be received.

Att. Gen. No, but good Mr. Serjeant, 'tis in the discretion of the court whether they will receive it or not; for the matter has been in debate already, and has received a determination; the court has overruled them in this very point already, and there is no more in this plea than was in the argument before, and therefore it ought to be rejected as a frivolous plea.

Sol. Gen. Here is a plea offered in writing, and in paper; the court sees what it is, and I hope you will give no countenance to it.

* In sir William Williams's MS. the phrase 'by my watch' is obliterated, and the word 'already' substituted.

† In sir William Williams's MS. this is altered thus 'to give time to consider of this paper.'

Mr. Pollexfen. I do hope, my lord, you will not judge this a frivolous plea; I think our case is such, that you will not do that: if you think fit you may over-rule it, but I hope you will not refuse it.

Sol. Gen. The court will certainly reject a frivolous plea, and they may do it, as is usually done by the courts in cases of pleas apparently frivolous as this is.

Mr. Pollexfen. But, Mr. Solicitor, I hope the court will consider of it, whether it be a frivolous plea or not. It is true, there has been a debate about the course of the court, and there has been an examination of the clerk of the office, and the court has gone upon his certificate; but yet still perhaps it may remain in doubt, and it being a question of such a consequence as this, it may very well deserve the court's consideration. There never was a judicial settlement of it that I know of yet; nor do I know any way of having it satisfactorily settled, but by the judgment of the court entered upon record. Here we offer a plea that contains the matter in debate, and this plea will appear upon record; and if upon consideration of the plea your lordship shall think fit to over-rule it, and be of opinion against the plea, then will you, by your resolution, in a judicial way, settle the question that has hitherto been in controversy.

L. C. J. Mr. Pollexfen, I would ask you, whether the counsel have dealt ingenuously with the court or no in this matter, after four hours debate, and the opinion of the court delivered, to come and sum up all the arguments in such a plea as this, and so put us upon debating it over again?

Mr. Pollexfen. My lord, certainly this has been done before, without offence. After we had moved for a thing which was denied upon motion, it is no such great disrespect to the court, with submission, to put the same matter into a plea, for the judicial opinion of the court.

Sir R. Sawyer. That, without all question, has been done a great many times.

Sol. Gen. How many times have you been accused of playing tricks, sir Robert Sawyer?

Sir R. Sawyer. Not so many as you, Mr. Solicitor.

Sol. Gen. I don't ask it, as if I questioned it; for I assure you, I don't doubt it of your part at all.

L. C. J. Pray, gentlemen, don't fall out with one another at the bar: we have had time enough spent already.

Mr. Pollexfen. Truly, my lord, I would not trick with the court in any case, nor on the other side would I be wanting to advise, and do for my client what I am able, and lawfully may. We have laboured all we could to get time for my lords the bishops to imparle to this information; and we have been the more earnest in it, because it concerns us, who attend this bar, to take what care we can that the course of the court may be observed; but as for this matter, we suppose this practice of the court is not in law a good practice. Now what

way in the world has any man to bring this so in question, as to have a judicial resolution of the court about it, but by such a plea? We take it, that it is usual and legal for us to have an imparlance, and a man would imparle, but the court upon motion refused to give him an imparlance. Is it not, think you, very fit for the party to have this judicially entered upon record? where all this matter will appear, and the party may be relieved by Writ of Error, if the judgment of the court should be wrong; but truly I cannot see how the court can refuse the plea; for if so be a plea be pleaded, they have their liberty to answer it on the other side by a replication, or else to demur, and the judgment of the court may be had upon it one way or other; but the court will never go about to hinder any man from pleading where he may plead by law. Here is a plea put in, and the court sure will take no notice what is the matter of the plea, till the other party have either replied or demurred. The same thing may happen in any other plea that is pleaded, and the party will be without remedy upon a Writ of Error, because the plea being rejected, there does nothing appear upon record. Truly for the court to reject and refuse the plea, would be as hard as the refusing the imparlance, and we know no way we have to help ourselves.

Sol. Gen. You might have entered your suggestion for an imparlance upon the roll, and then it would have appeared upon record, and if the court had unjustly denied it you, you would have had the benefit of that suggestion elsewhere. Truly, my lord, I think if any thing be tricking, this is, for it is plainly ill pleading.

Mr. Finch. Then pray demur to it.

Sol. Gen. No, Sir, 'tis fencing with the court, and that the court won't endure. It is only to delay; and if we should demur, then there must be time for arguing; and what is the question after all, but whether you would be of the same opinion to-morrow, that you are to-day?

Sir R. Sawyer. I would put Mr. Solicitor in mind of Fitz-Harris's Case,* which he knows very well: he put in a plea, and we for the king desired it might not be received; but the court gave him time to put it into form, and I was fain to join in demurrer presently, and so may these gentlemen do if they please.

Sol. Gen. Yes, sir Robert Sawyer, I do know the case of Fitz-Harris very well; I was assigned of counsel by the court for him; we were four of us, and there was a plea put in, but no such plea as this. There was an indictment of high-treason against him, in which case it is agreed on all hands, that the party must answer presently; but because he suggested here at the bar, and says he, I have matter to plead to the jurisdiction of the court, and shewed what it was. I was impeached before the lords in parliament for High-treason, for the same matter of which I am here ac-

* See it in vol. 8, p. 223.

cused. The court did give him time to put this into form, and we were assigned his counsel to draw it up for him, and accordingly we did put that matter into a plea, that he was here indicted for one and the same high-treason for which he was impeached in parliament, and that that impeachment was still depending, and so we rested in the judgment of the court, whether we should be put to answer it here. This was a plea that carried something of weight in it, and not such a trifling plea as this is. It is true, sir Robert Sawyer, who was then attorney-general, did press the court to over-rule it immediately; but it being a matter of some importance, the court would not do that, but had it argued solemnly by counsel on both sides, and at last there was the opinion of three judges against one, that the plea was no good plea. But what is that to such a trifling plea as this?

Att. Gen. Pray, my lord, favour me a few words about that case of Mr. Fitzharris. It is true, there was a plea put in, and it is true also, that that which brought that plea to be argued, was the demurrer that was put in by sir Robert Sawyer, who was so zealous and hasty in the matter, that because the court did not presently over-rule the plea, as he desired, he immediately demurred, before the rest of the king's counsel could offer at any thing about it; and thereupon it was put to the judgment of the court, and no doubt must be argued, and spoke to on both sides; but where pleas are really in abuse of the court, the court never gives any countenance to them: nay, truly I have known another course taken; I am unwilling to mention a case that happened much about that time too in this court; because of that regard I have to my lords the bishops, but sir Robert Sawyer remembers it very well, I am sure: it was the case of one Whitaker, who for a thing like this, putting in a trifling plea, not only had his plea rejected, but something else was ordered. I could shew the precedent, but that I am more tender than to press it in this case, because there the court ordered an attachment to go against him; but I will put these gentlemen in mind of another case, and that is the case of a peer too: it is the case of my lord Delamere, which they cannot but remember, it being in the highest case, a case of treason.* When my lord Delamere was arraigned, and to be tried for High Treason, he put in a plea before my lord chancellor, who was then high steward, and sir Robert Sawyer, who was then attorney-general, prayed the lord steward, and the peers, to reject it, and the court did reject it, (as we hope the court will do this,) and would never so far delay justice as to admit of a plea that carried no colour in it, and there was no demurrer put into the plea, but it was absolutely refused. My lord, in this case we have had the judgment of the court already, and therefore we must now desire that this plea may be rejected.

Sol. Gen. My lord, we have now gone out

of the way far enough already: it is time for us to return, and bring the case into its due methods. We pray your lordship to reject this plea.

Sir R. Sawyer. My lord, we are in your judgment, whether you will receive this plea or not.

L. C. J. You shall have my judgment presently; but my brothers are to speak first.

Just. Allybone. Mr. Pollexfen makes it a question, whether this plea may be rejected, or whether it ought to be received, and the court give their judgment upon it.

Just. Powell. Truly I do not know whether the court can reject this as a frivolous plea.

L. C. J. Surely we may, and frequently do.

Att. Gen. You do it every day, it is a frequent motion: if a frivolous plea be put in, before it be entered upon record, as a plea, the court may refuse it, if they see cause.

Just. Allybone. Truly if it may be, this appears to me a frivolous plea.

Just. Powell. I do not know how the court can reject any plea that the party will put in, if he will stand by it, as they say they will here; and I cannot think this a frivolous plea, it concerning the privilege of peers, and lords of parliament.

Just. Allybone. Brother Powell, I would be as tender of the privileges of parliament, and speak with as much respect of the privileges of the peerage as any body else; but for the matter of the plea, truly it appears to me, that the peers are named in it only for fashion sake, and it is frivolous.

Just. Powell. The matter of the plea, except only their being said to be peers and lords of parliament, was spoke to before, but it was only *obiter* and by way of motion; but now it may come before us for our judicial determination.

Just. Allybone. Pray let the plea be read again. [Which was done.] This plea is no more but that which has been denied already upon solemn debate; and if it be in the power of the court to reject any plea, surely we ought to reject this. Indeed I know not what power we have to reject a plea; but if we have power, this ought to be rejected.

Just. Powell. I declare my opinion; I am for receiving the plea, and considering of it.

Just. Holloway. I think as this case is, this plea ought not to be received, but rejected, because it is no more than what has been denied already. I am not ashamed to say, that I should be very glad and ready to do all things that are consistent with my duty, to shew respect to my lords the bishops, some of whom are my particular friends; but I am upon my oath, and must go according to the course of law.

L. C. J. We have asked, and informed ourselves from the bar, whether we may or can reject a plea; and truly what they have said, hath satisfied me that we may, if the plea be frivolous; and this being a plea that contains no more than what has been over-ruled al-

T

* See Vol. 11, p. 509.

ready, after hearing what could be said on both sides, the court is not bound to receive the plea, but may reject it, and my lords the bishops must plead over.

Att. Gen. We pray they may plead in chief.

Clerk. My lord archbishop of Canterbury, is your grace guilty of the matter charged upon you in this information, or not guilty?

Archbishop of *Cant.* Not guilty.

Clerk. My lord bishop of St. Asaph, is your lordship guilty of the matter charged upon you in this information, or not guilty?

Bishop of *St. Asaph.* Not guilty.

Clerk. My lord bishop of Ely, is your lordship guilty of the matter charged upon you in this information, or not guilty?

Bishop of *Ely.* Not guilty.

Clerk. My lord bishop of Chichester, is your lordship guilty of the matter charged upon you in this information, or not guilty?

Bishop of *Chichester.* Not guilty.

Clerk. My lord bishop of Bath and Wells, is your lordship guilty of the matter charged upon you in this information, or not guilty?

Bishop of *Bath and Wells.* Not guilty.

Clerk. My lord bishop of Peterborough, is your lordship guilty of the matter charged upon you in this information, or not guilty?

Bishop of *Peterborough.* Not guilty.

Clerk. My lord bishop of Bristol, is your lordship guilty of the matter charged upon you in this information, or not guilty?

Bishop of *Bristol.* Not guilty.

Att. Gen. My lord, I pray the clerk may join issue on the behalf of the king, so that we may come to trial; and we would have these gentlemen take notice, that we intend to try this cause on this day fortnight; and we pray liberty of the court, that we may try it at bar.

L. C. J. Are you not too hasty in that motion, Mr. Attorney?

Att. Gen. My lord, we should indeed make it the motion of another day; but we do now tell them this *ex abundanti*, because my lords the bishops are now here, and will, I suppose, take notice, that we do intend to move it another day.

Sol. Gen. We now give them notice, that we intend to move.

Sir R. Sawyer. For that you need not trouble yourselves; we are very desirous it should be tried at bar, and that as soon as you please.

Att. Gen. Well then, you take notice it will be tried this day fortnight.

L. C. J. Well, what shall we do with my lords the bishops?

Att. Gen. They areailable, no question of it, my lord, if they please.

L. C. J. Then, my lords, we are ready to bail you, if you please.

Sir R. Sawyer. We desire your lordship would be pleased to take their own recognizance.

L. C. J. What say you, Mr. Attorney? I think that may do well enough.

Att. Gen. My lord, with all my heart; we will do it.

L. C. J. In what penalty shall we take it?

Att. Gen. One thousand pound I think, my lord, his grace, and five hundred pounds a-piece the rest.

Sir R. Sawyer. What necessity is there for so much?

Att. Gen. Look you, sir Robert Sawyer, to shew you that we do insist upon nothing that shall look like hardship, what my lords have been pleased to offer concerning taking their own recognizance, we agree to, and what sums the court pleases.

Sol. Gen. It is all one to us; we leave it wholly to the court.

Sir R. Sawyer. Only I have one thing more to beg of your lordship, on the behalf of my lords the bishops, that you will please to order, that in the return of the jury there may be forty-eight returned.

Att. Gen. I tell you what we will do; sir Samuel Astry shall have the Freeholders Book, if you please, and shall return twenty-four.

Sir R. Sawyer. Eight and forty has been always the course, when the jury is returned by sir Samuel Astry.

Sol. Gen. My lord, I pray the officer may return the jury, according as is usual in cases of this nature.

Att. Gen. Do you admit of a trial at bar, gentlemen?

Sir R. Sawyer. Yes, and try it when you will.

L. C. J. They say it shall be this day fortnight, and let there be a jury according to the usual course.

Sir R. Sawyer. We pray it may be in the presence of the Attorneys and Solicitors on both sides.

L. C. J. What is the usual course, sir Samuel Astry? Do you use to return twenty-four, or forty-eight, and then strike out twelve a-piece, which I perceive they desire for the defendants?

Sir S. Astry. My lord, the course is both ways, and then it may be as your lordship and the court will please to order it.

L. C. J. Then take forty eight, that is the fairest.*

Att. Gen. We agree to it; we desire nothing but a fair jury.

Sir R. Sawyer. Nor we neither; try it when you will.

L. C. J. Take a recognizance of his grace my lord of Canterbury in 200*l.* and the rest of my lords in 100*l.* a-piece.

Att. Gen. What your lordship pleases for that, we submit to it.

Clerk. My lord of Canterbury, your grace acknowledges to owe unto our sovereign lord the king the sum of 200*l.* upon condition that your grace shall appear in this court on this day fortnight, and so from day to day, till you shall be discharged by the court, and not to depart without leave of the court. Is your grace contented?

* See the Case of the King v. Horne, A. D. 1776, in this Collection.

Archb. of Canterbury. I do acknowledge it.

Clerk. My lord bishop of St. Asaph, you acknowledge to owe unto our sovereign lord the king the sum of 100*l.* upon condition that your lordship shall appear in this court on this day fortnight, and so from day to day, until you shall be discharged by the court, and not to depart without leave of the court. Is your lordship contented?

Bishop of St. Asaph. I do acknowledge it.

The like Recognizances were taken of all the rest of the Bishops, and then the court arose.

Friday, June 29, 1688.

Clerk. Crier, make proclamation thrice.

Crier. O yes! O yes! O yes! Our sovereign lord the king streightly charges and commands every one to keep silence, upon pain of imprisonment.

Clerk of the Crown. Call the defendants.

Crier. William lord archbishop of Canterbury.—Archbishop. Here.

Crier. William lord bishop of St. Asaph.

Bishop of St. Asaph. Here.

And so the rest of the Bishops were called, and answered severally.

Clerk. Gardez votres challenges. Swear sir Roger Langley.

Crier. Take the book, sir Roger. You shall well and truly try this issue between our sovereign lord the king and William lord archbishop of Canterbury, and others, according to your evidence. So help you God.

The same Oath was administered to all the Jury, whose names follow, viz. Sir Roger Langley, bart. sir William Hill, knt. Roger Jennings, Thomas Harriot, Jeoffery Nightingale, William Withers, William Avery, Thomas Austin, Nicholas Grice, Michael Arnold, Thos. Done, and Richard Shoreditch, esqrs.

Clerk. You gentlemen of the jury who are sworn, hearken to the Record; sir Thomas Powys, knt. his majesty's Attorney General, has exhibited an Information, which does set forth as followeth:

“ ss. Memorandum, That sir Thos. Powys, knt. Attorney General of our lord the king, who for our said lord the king in this behalf prosecutes, came here in his own person into the court of our said lord the king, before the king himself at Westminster, on Friday next after the morrow of the Holy Trinity in this term; and on the behalf of our said lord the king, out of his signal clemency, and gracious intention towards the subjects of his kingdom of England, by his royal prerogative, on the 4th day of April, in the 3rd year of the reign of our said lord the king, at Westminster in the county of Middlesex, did publish his royal Declaration, intituled, ‘ His Majesty's Gracious Declaration to all his loving Subjects for Li-

‘ berty of Conscience,’ bearing date the same day and year, sealed with the great seal of England; in which Declaration is contained, ‘ James R.’ *prout* in the first Declaration before recited.

“ And the said Attorney General of our said lord the king, further giveth the court here to understand and be informed, That afterwards, to wit, on the 27th day of April, in the 4th year of the reign of our said lord the king, at Westminster aforesaid, in the county of Middlesex aforesaid, our said lord the king, out of his like clemency, and gracious intention towards his subjects of his kingdom of England, by his royal prerogative, did publish his other royal Declaration, intituled, ‘ His Majesty's Gracious Declaration,’ bearing date the same day and year last mentioned, sealed with his great seal of England; in which Declaration is contained, ‘ James R. Our conduct has been such,’ &c. *prout* in the second Declaration before recited.

“ Which said royal Declaration of our said lord the king last mentioned, our said lord the king afterwards, to wit, on the 30th day of April, in the 4th year of his reign aforesaid, at Westminster aforesaid, in the county of Middlesex aforesaid, did cause to be printed and published throughout all England; and for the more solemn declaring, notification, and manifestation of his royal grace, favour, and bounty towards all his liege people, specified in the Declaration last mentioned, afterwards, to wit, on the 4th day of May, in the 4th year of his reign, at Westminster aforesaid, in the county of Middlesex aforesaid, our said lord the king in due manner did order as followeth:

‘ At the Court at Whitehall, May 4, 1688.

‘ By the King's most Excellent Majesty, and
‘ the Lords of his Majesty's most Honour-
‘ able Privy-Council.

‘ It is this day ordered by his majesty in
‘ council, That his majesty's gracious Decla-
‘ ration, bearing date the 27th of April last, be
‘ read at the usual time of divine service, upon
‘ the 20th and 27th of this month, in all churches
‘ and chapels within the cities of London and
‘ Westminster, and ten miles thereabout; and
‘ upon the 3rd and 10th of June next, in all
‘ other churches and chapels throughout this
‘ kingdom. And it is hereby further ordered,
‘ That the right reverend the bishops cause the
‘ said Declaration to be sent and distributed
‘ throughout their several respective dioceses,
‘ to be read accordingly.

‘ W. BRIDGMAN.’

“ And further, the said Attorney General of our said lord the king, on behalf of our said lord the king, giveth the court here to understand and be informed, that after the making of the said order, to wit, on the 18th day of May, in the 4th year of the reign of our said lord the king, at Westminster aforesaid, in the county of Middlesex aforesaid, Wm. archbishop of Can-

terbury of Lambeth in the county of Surry; Wm. bishop of St. Asaph of St. Asaph, in the county of Flint; Francis bishop of Ely, of the parish of St. Andrew Holborn in the county of Middlesex; John bishop of Chichester, of Chichester in the county of Sussex; Thomas bishop of Bath and Wells, of the city of Wells in the county of Somerset; Thomas bishop of Peterborough, of the parish of St. Andrew Holborn in the county of Middlesex; and Jonathan bishop of Bristol, of the city of Bristol, did consult and conspire among themselves to diminish the regal authority, and royal prerogative, power and government of our said lord the king, in the premises, and to infringe and elude the said order; and in prosecution and execution of the conspiracy aforesaid, they the said William archbishop of Canterbury, William bishop of St. Asaph, Francis bishop of Ely, John bishop of Chichester, Thomas bishop of Bath and Wells, Thomas bishop of Peterborough, and Jonathan bishop of Bristol, on the said 18th day of May, in the 4th year of the reign of our said lord the king aforesaid, with force and arms, &c. at Westminster aforesaid, in the county of Middlesex aforesaid, falsely, unlawfully, maliciously, seditiously, and scandalously did frame, compose and write, and caused to be framed, composed and written, a certain false, feigned, malicious, pernicious and seditious Libel in writing, concerning our said lord the king, and his royal Declaration and Order aforesaid, (under pretence of a Petition), and the same false, feigned, malicious, pernicious and seditious Libel, by them the aforesaid William archbishop of Canterbury, Wm. bishop of St. Asaph, Francis bishop of Ely, John bishop of Chichester, Thomas bishop of Bath and Wells, Thomas bishop of Peterborough, and Jonathan bishop of Bristol, with their own hands respectively being subscribed, on the day and year, and in the place last mentioned, in the presence of our said lord the king, with force and arms, &c. did publish and cause to be published; in which said false, feigned, malicious, pernicious and seditious libel is contained, 'The humble Petition,' &c. *prout* before in the Petition, to these words 'reasonable construction,' in manifest contempt of our said lord the king, and of the laws of this kingdom, to the evil example of all others in the like case offending, and against the peace of our said lord the king, his crown and dignity, &c. Whereupon the said Attorney General of our said lord the king, on behalf of our said lord the king, prays the advice of the court here in the premises, and due process of law to be made out against the aforesaid William archbishop of Canterbury, William bishop of St. Asaph, Francis bishop of Ely, John bishop of Chichester, Thomas bishop of Bath and Wells, Thomas bishop of Peterborough, and Jonathan bishop of Bristol, in this behalf, to answer our said lord the king in and concerning the premises, &c.

" T. POWYS.

" W. WILLIAMS."

To this Information the Defendants have pleaded not guilty, and for their trial have put themselves upon their country, and his majesty's attorney general likewise, which country you are. Your charge is to enquire whether the defendants, or any of them, are guilty of the matter contained in this information that hath been read unto you, or not guilty. If you find them, or any of them guilty, you are to say so; and if you find them, or any of them, not guilty, you are to say so, and hear your evidence. Crier, make proclamation.

Crier. O yes! If any one will give evidence on behalf of our sovereign lord the king, against the defendants, of the matters whereof they are impeached, let them come forth, and they shall be heard.

Mr. Wright. May it please your lordship, and you gentlemen of the jury, this is an information exhibited by his majesty's Attorney General against the most reverend my lord archbishop of Canterbury, and six other honourable and noble bishops in the information mentioned: and the information sets forth, that the king, out of his clemency and benign intention towards his subjects of this kingdom, did put forth his royal Declaration, bearing date the 4th day of April, in the third year of his reign, entitled, 'His majesty's gracious Declaration to all his loving subjects for liberty of conscience;' and that afterwards, the 27th of April, in the 4th year of his reign, he published another Declaration, both which have been read to you; and for the further manifestation and notification of his grace in the said declaration, bearing date the 27th of April last, his majesty did order, that the said declaration should be read on the 20th and 27th of May in the cities of London and Westminster, and ten miles about; and on the 3rd and 10th of June throughout the whole kingdom: and that the right reverend the bishops should send the said Declaration to be distributed throughout their respective dioceses, to be read accordingly. But that the said archbishop and bishops the 18th of May, in the said fourth year of his said majesty's reign, having conspired and consulted among themselves to diminish the king's power and prerogative, did falsely, unlawfully, maliciously, and scandalously make, compose, and write a false, scandalous, malicious and seditious libel, under pretence of a petition; which libel they did publish in the presence of the said king; the contents of which libel you have likewise heard read. To this they have pleaded not guilty: you, gentlemen, are judges of the fact; if we prove this fact, you are to find them guilty.

Att. Gen. May it please your lordship, and you gentlemen of the jury, you have heard this information read by the clerk, and it has been likewise opened to you at the bar; but before we go to our evidence, perhaps it may not be amiss for us, that are of counsel for the king, now in the beginning of this cause, to settle the question right before you, as well to tell you what my lords the bishops are not

prosecuted for, as what they are. First, I am to tell you, and I believe you cannot yourselves but observe, that my lords are not prosecuted as bishops, nor much less are they prosecuted for any point or matter of religion, but they are prosecuted as subjects of this kingdom, and only for a temporal crime, as those that have injured and affronted the king to his very face; for it is said to be done in his own presence. In the next place, they are not prosecuted for any nonfeasance, or not doing or omitting to do any thing, but as they are actors, for censuring of his majesty and his government, and for giving their opinion in matters wholly relating to law and government: and I cannot omit here to take notice, that there is not any one thing that the law is more jealous of, or does more carefully provide for the prevention and punishment of, than all accusations and arraignments of the government. No man is allowed to accuse even the most inferior magistrate of any misbehaviour in his office, unless it be in a legal course, though the fact is true. No man may say of a justice of peace to his face, that he is unjust in his office. No man may tell a judge, either by word or petition, you have given an unjust, or an ill judgment, and I will not obey it; it is against the rules and law of the kingdom, or the like. No man may say of the great men of the nation, much less of the great officers of the kingdom, that they do act unreasonably or unjustly, or the like; least of all may any man say any such thing of the king; for these matters tend to possess the people, that the government is ill administered; and the consequence of that is, to set them upon desiring a reformation; and what that tends to, and will end in, we have all had a sad and too dear bought experience: the last age will abundantly satisfy us, whither such a thing does tend. Men are to take their proper remedies for redress of any grievances they lie under, and the law has provided sufficiently for that. These things are so very well known to all men of the law, and indeed to all the people of England of any understanding, that I need not, nor will not, stand any longer upon it, but come to the matter that is now before you, gentlemen, to be tried. The fact that we have laid we must prove, rather to keep the formality of a trial, than to pretend to inform you, or tell you what you do not know: it is publicly notorious to the whole world; but because we must go on in the regular methods of law, we shall prove the facts in the order they are laid in the information. First, we take notice, that his majesty, of his great clemency and goodness to his people, and out of his desire that all his subjects might live easily under him, (of which I think never prince gave greater or more plain evidence of his intentions that way) the 4th of April, 1687, he did issue forth his royal declaration for liberty of conscience. This matter, without all question, was welcome to all his people that stood in need of it; and those that did not could not but say, the thing

in the nature of it was very just and gracious; but presently it must be surmised, that the king was not in earnest, and would not, nor could not, make good his promise: but to take away all surmises, his majesty was pleased by his declaration of the 27th of April last, not only to repeat his former declaration, but likewise to renew his former promises to his people, and to assure them that he still was, and yet is, of the same opinion that he had at first declared himself to be of; nay, we further shew you, that to the end that this thing might be known to all his people, even to the meanest men, who, it may be, were not willing or able to buy the declaration, and that the king himself might be under higher obligations, if it were possible, than his own word, he was desirous it should be repeated in the churches, and read in that sacred place, that all his people might hear what he had promised, and given his own sacred word for; and he himself might be under the solemn tie and obligation to keep his word, by remembering that his promises had, by his own command, been published in the time of divine service, in the house of God; and thereupon was the order of council made, that has been likewise read to you, which does direct, that it should be read in all the churches and chapels in the kingdom; and you have heard, and we shall prove, what a return his majesty has had for this grace and kindness of his: you'll find, when they come to read that which they call a petition, all their thanks his majesty had for his favour and goodness to his people, 'tis only hard words, and a heavy accusation, such as a private person would be little able to bear. I will not aggravate the matter, but only say thus much, that his majesty, who was always a prince of as great clemency as ever this kingdom had, and who was represented for all that as a prince of the greatest cruelty, before his accession to the crown, by his enemies, is now accused by his friends for this effect of his mercy. My lord, and gentlemen of the jury, his majesty resented this ill usage so far, that he has ordered, and thought fit to have a public vindication of his honour in this matter, by this trial; and we shall go on to our proofs, and we do not doubt but you will do his majesty (as you do all other persons) right.

Sol. Gen. My lord, we will go on to prove the parts of this information; and we will proceed according to the method which Mr. Attorney has opened, and which is pursuant to the order of the facts laid in the information. Give us the first Declaration under the Great Seal; the Declaration of the 4th of April, 1687.

[The Declaration was delivered into the Court.]

Sol. Gen. Read the date of it first.

Clerk reads. 'Given at our Court at White-hall, the 4th day of April, 1687, and in the third year of our reign.'

Sol. Gen. Read the title of it, Sir.

Clerk. It is intituled, 'His Majesty's gra-

‘ cious Declaration to all his loving subjects for
‘ liberty of conscience.’

Sir R. Sawyer. Is it under seal? Is the Great Seal to it?

Sol. Gen. Give it down to sir Robert Sawyer, that he may see it; for I would have every thing as clear as possible. Sir Robert Sawyer, will you have it read?

Sir R. Sawyer. No, we would save as much of the time of the court as may be.

Sol. Gen. Then pray put in the second Declaration of the 27th of April last.

Clerk reads. ‘ Given at our court at Whitehall, the 27th day of April, 1688, in the 4th year of our reign; and it is entitled, his Majesty’s gracious declaration.’

Sir R. Sawyer. Is that under the great seal too?—Clerk. Yes, it is.

Sol. Gen. Deliver that down likewise that they may see it.

Sir R. Sawyer. We are satisfied, you need not read it.

Sol. Gen. Then where is the order of council for the reading of it?

Att. Gen. Swear sir John Nicholas. There he is. [Sir J. Nicholas sworn.]

L. C. J. Come, Mr. Attorney, what do you ask sir John Nicholas?

Sol. Gen. Hand the order to sir John Nicholas. Is that the order of council, sir John?

Sir J. Nicholas. The book, Sir, is not in my custody. There is the Register that keeps it, he has it here to produce.

Sol. Gen. Swear Mr. Gantlett. [Mr. Gantlett sworn.] Is that the council-book?

Mr. Gantlett. Yes, this is the council-book.

Sol. Gen. Then turn to the order of the 4th of May, the king’s order of council for the reading the Declaration.

Mr. Gantlett. There it is, sir. [The book delivered into court.]

Sol. Gen. Read it, I pray.

Clerk reads. ‘ At the court of Whitehall, the 4th of May, 1688,’ and so reads the Order of council.

Sol. Gen. My lord, we have one thing that is mentioned in the information, that this Declaration was printed; if that be denied, we will call Henry Hills, his majesty’s Printer, because we would prove all our information as it is laid.

L. C. J. You must do so, Mr. Solicitor; you must prove the whole Declaration.

Sol. Gen. Crier, call Henry Hills. [He was called, but did not presently appear.] Call Mr. Bridgman. Though these declarations prove themselves, we have them here printed. But swear Mr. Bridgman. [Mr. Bridgman sworn.] Shew Mr. Bridgman the two Declarations.

L. C. J. What do you ask him?

Sol. Gen. We ask you, Sir, if the two Declarations were printed?

Mr. Bridgman. What Declarations do you mean, Mr. Solicitor?

Sol. Gen. You know what Declarations I mean well enough; but we’ll ask you particularly. You know the Declaration that was

made the 4th of April, in the third year of the king. Was it printed?

Mr. Bridgman. Yes, it was printed by the king’s order.

Sol. Gen. Was that of the 27th of April in the 4th year of the king, printed?

Mr. Bridgman. Yes, they were both printed by the king’s order.

Att. Gen. Then the next thing in course is the bishops’ Paper.

Sir R. Sawyer. Mr. Bridgman, pray let me ask you one question; did you ever compare the print with that under seal?

Mr. Bridgman. I did not compare them, sir Robert Sawyer.

Sol. Gen. He does swear they were printed by the king’s order.

Sir R. Sawyer. Good Mr. Solicitor, give me leave to ask him a question. Can you swear then that they are the same?

Mr. Bridgman. I was not asked that question, sir.

Sol. Gen. Come then, Mr. Bridgman, I’ll ask you. Do you believe they are the same?

Sir R. Sawyer. Is that an answer to my question?

Sol. Gen. We must ask him questions as well as you, sir Robert. What say you, do you believe it to be the same?

L. C. J. You hear Mr. Solicitor’s question, answer it, Mr. Bridgman.

Mr. Bridgman. Yes, my lord, I do believe it.

L. C. J. Well, that’s enough.

Att. Gen. If there were occasion, we have them here compared, and they are the same.

Sir R. Sawyer. With submission, my lord, in all these cases, if they will prove any fact that is laid in an information, they must prove it by those that know it of their own knowledge. Do you know it to be the same?

Sol. Gen. That’s very well, Sir.

Sir R. Sawyer. Ay, so it is, Mr. Solicitor. It is a wonderful thing, my lord, that we cannot be permitted to ask a question. Do you know it to be the same, Mr. Bridgman, I ask you again?

Mr. Bridgman. I have not compared them, I tell you, sir Robert Sawyer.

Sir R. Sawyer. Then that is no proof.

L. C. J. Would you have a man swear above his belief? He tells you he believes it is the same.

Sir R. Sawyer. Is that proof of an information?

L. C. J. Well, you’ll have your time to make your objections by and by.

Att. Gen. Then swear sir John Nicholas.

Sir J. Nicholas. I am sworn already.

Att. Gen. I see you have a paper in your hand, sir John Nicholas; pray who had you that paper from?

Sir J. Nicholas. I will give you an account of it as well as I can.

Mr. Pollexfen. Before they go to another thing, my lord, we think they have failed in their proof of their information, about the printing this Declaration.

Att. Gen. Where is Mr. Hills?

Just. Allybone. They have laid that it was printed by the king's order; and it is such a matter, Mr. Solicitor, as you may clear if you will, sure.

Sol. Gen. There is Mr. Hills; now I see him.

L. C. J. I was going to give order, that you should send to the printing-house for him.

Just. Allybone. They may put this matter out of doubt too, if they will, on the other side; for I see they have a copy in print, and there's the original; they may compare them if they please.

Sol. Gen. I am very glad to hear such a strong objection.

Sir R. Sawyer. We would clear the way for you, Mr. Solicitor.

Sol. Gen. No, you put straws in our way; we shall be able enough to clear it without your help. Swear Mr. Hills, and young Mr. Graham here. [Hills and Graham sworn.]

Sol. Gen. Mr. Graham, did you compare any of these printed declarations with the original?

Graham. Yes, I did compare some of them, and did make amendments as I went along.

Sol. Gen. Shew one that you have compared with the original.

Att. Gen. Hills is here himself, we'll ask him. Are you sworn, Sir?

Crier. He is sworn.

Att. Gen. Pray, were the king's Declarations for Liberty of Conscience printed, both of them?

Hills. Ay, an't please you, Sir.

Att. Gen. You printed them, I think?

Hills. Yes, I did print them.

Sir R. Sawyer. Mr. Hills, you say they were printed: upon your oath, after they were printed, did you examine them with the original under seal?

Hills. They were examined before they were printed.

Sir R. Sawyer. Did you examine them?

Hills. I did not; here's one that did.

Sol. Gen. Who is that?

Hills. It is Mr. Williams here.

Sol. Gen. Swear him. [Williams sworn.] Do you hear, Williams? Do you know that the king's Declarations for Liberty of Conscience, two of them, one of the 4th of April, and the other of the 27th of April, were printed?

Williams. Yes, my lord.

Sol. Gen. Did you examine them after they were printed, by the copy they were printed from?—*Williams.* I did.

Sol. Gen. Where had you the copy? Who had you it from?

Williams. I had it from Mr. Hills.

Sir R. Sawyer. Mr. Williams, did you examine them with the original under the great seal?—*Williams.* The first Declaration I did.

Sir R. Sawyer. The second Declaration is the main.

Williams. The second was composed by the first.

Sir R. Sawyer. Why, is there no more in the second Declaration than there was in the first?—*Williams.* Yes, there is, Sir.

Sir R. Sawyer. Did you examine that with the original under the great seal?

Williams. No, I did not.

Sol. Gen. Can any one tell who did examine it under the great seal?

Mr. Finch. Pray, what did you examine it by, Mr. Williams?

Williams. By a copy that I received from Mr. Hills.

Att. Gen. Then we will go on; and we desire sir John Nicholas to give an account where he had that paper that he has in his hand?

Mr. Finch. My lord, it does not appear that the copy that was printed is the true copy of the Declaration.

Att. Gen. He says he had it from Mr. Hills.

Mr. Finch. Pray, Mr. Hills, what did you examine that copy by which you gave to Mr. Williams?

Hills. I had the copy from Mr. Bridgman.

Mr. Finch. Did you examine it with the original under the great seal?

Hills. I did not examine it; I had it from Mr. Bridgman.

Mr. Finch. What, was it under seal?

Mr. Bridgman. It was the original signed by the king.

Mr. Finch. But I ask you, was it under seal?

Mr. Bridgman. Not under the great seal it was not, it was the very Declaration the king signed.

Sir R. Sawyer. But it ought to be compared with the original, or it is no good proof that it is the same.

Sol. Gen. Sir Robert Sawyer, you understand collation better, sure; you should be ashamed of such weak objections as this.

Williams. We never bring our proof to the great seal.

Sir R. Sawyer. But if you will have it proof at law, you must have it compared with the original.

Sol. Gen. Do you think there is any great stress to be laid upon that? We only say it was printed.

Sir R. Sawyer. But you have made it part of your information, and therefore you must prove it.

L. C. J. I think there's proof enough of that; there needs no such nicety.

Mr. Pollexfen. Well, my lord, we must submit, let them go on, we won't stand upon this.

Att. Gen. Then pray let me go on. Where had you that paper, sir John Nicholas?

Sir J. Nicholas. I had this paper from the king's hand.

L. C. J. Put it in.

Sol. Gen. Who had you it from, do you say?

Sir J. Nicholas. From the king.

Sol. Gen. About what time had you it from the king, Sir?

Sir J. Nicholas. I had it twice from the king.

Sol. Gen. When was the first time, Sir?

Sir J. Nicholas. The first time was in the council, the 8th of this month.

Sol. Gen. What became of it afterwards?

Sir J. Nicholas. The king had it from me the 12th, and the 13th I had it from the king again.

Sol. Gen. Pray, deliver it this way into the court: we will now go on, and prove the bishops hands to it. This is the Paper upon which we bring this Information: gentlemen, it is all the hand-writing of my lord archbishop, and signed by him and the rest of the bishops.

Att. Gen. I suppose my lords the Bishops will not put us to prove it, they will own their hands.

L. C. J. Yes, Mr. Attorney, their counsel will put you to prove it; I perceive your best way is to ask nothing of them.

Att. Gen. My lord, we will desire nothing of them. We will go on to our proofs. Call sir Thomas Exton, sir Richard Raynes, Mr. Brooks, Mr. Recorder, and Mr. William Middleton. [Sir Thomas Exton appeared, and was sworn.]

L. C. J. What do you ask sir T. Exton?

Att. Gen. Pray convey that paper to sir Thomas Exton.

Sol. Gen. Shew that paper to sir Thomas Exton. Sir Thomas, I would ask you one question: Do you know the hand-writing of my lord archbishop of Canterbury?

Sir T. Exton. I'll give your lordship what account I can.

Sol. Gen. Pray, Sir, answer my question; do you know his hand-writing?

Sir T. Exton. I never saw him write five times in my life.

Sol. Gen. But I ask you, upon your oath, do you believe that to be his hand-writing?

Sir T. Exton. I do believe this may be of his hand-writing.

Sol. Gen. Do you believe all the body of it to be of his hand-writing, or only part of it?

Sir T. Exton. I must believe it to be so, for I have seen some of his hand-writing, and this is very like it.

Sol. Gen. What say you to the name? Do you believe it to be his hand-writing?

Sir T. Exton. Yes, yes, I do.

Sol. Gen. Do you know any of the rest of the names that are upon that paper?

Sir T. Exton. No, I do not.

L. C. J. Do you for the defendants ask sir Thomas Exton any question?

Sir R. Sawyer. No, my lord.

Att. Gen. Then call sir Richard Raynes.

Sir T. Exton. My lord, sir Richard Raynes has been sick this month, and has not been at the Commons.

Sol. Gen. We have no need of him. Call Mr. Brooks. [Mr. Brooks sworn.]

Att. Gen. Pray shew Mr. Brooks that paper.

Sol. Gen. Mr. Brooks, I ask you this question, do you know my lord archbishop's hand-writing?—*Mr. Brooks.* Yes, my lord.

Att. Gen. Pray look upon that paper; do you take that to be my lord archbishop's hand?

Brooks. Yes, my lord, I do believe it to be my lord archbishop's hand.

Att. Gen. What say you to the whole body of the paper?

Brooks. I do believe it to be his hand.

Att. Gen. What do you say to his name there?

Brooks. I do believe this name is his hand-writing.

Sol. Gen. Call Mr. William Middleton.

Att. Gen. Pray, Mr. Brooks, don't go away, but look upon the names of the bishop of St. Asaph, and my lord of Ely.

Sol. Gen. Do you know my lord bishop of St. Asaph's hand-writing?

Brooks. I have seen my lord archbishop of Canterbury, and the bishop of St. Asaph's hand-writing, and I do believe this is his hand.

Sol. Gen. Look you upon the name of my lord Ely; do you know his hand-writing?

Brooks. My lord, I am not so well acquainted with my lord of Ely's writing.

Sol. Gen. But have you seen his writing?

Brooks. Yes, I have.

Sol. Gen. Is that his writing, do you think?

Brooks. It is like it.

Sol. Gen. Do you believe it to be his hand?

Brooks. Truly I do believe it.

Sir George Treby. Did you ever see him write?—*Brooks.* No, sir.

Sol. Gen. But he has seen his writing.

Sir G. Treby. How do you know that it was his hand-writing that you saw?

Brooks. Because he owned it.

L. C. J. How do you know it, do you say?

Brooks. I know it, I say, because I have seen a letter that he writ to another person, which he afterwards owned.

L. C. J. What did he own, Mr. Brooks?

Brooks. That he wrote a letter to another person, which I saw.

Sir G. Treby. To whom, Sir?

Sir R. Sawyer. Have you the letter here, Sir?

Brooks. No, Sir, the letter was writ to my lord bishop of Oxford.

Sir G. Treby. Can you tell what was in that letter?

Att. Gen. What is that to this question? You ask him how he knows his hand-writing; and, says he, I did not see him write, but I have seen a letter of his to the lord bishop of Oxford.

L. C. J. And he does say, my lord of Ely owned it to be his hand that is there.

Sol. Gen. No, my lord, that's a mistake, he owned a letter that he had writ to the bishop of Oxford to be his hand-writing, and by comparison of this with that, says he, I take this to be his hand-writing.

Brooks. That is my meaning, my lord.

Sol. Gen. Pray, speak out, and tell us what are the reasons that make you say you believe this to be the bishop of Ely's writing.

Brooks. Because it resembles a letter that I have by me of his writing to the bishop of Oxford.

Sol. Gen. And you say he owned that letter to be his?

Brooks. My lord bishop of Oxford did answer it, and I waited upon the bishop of Ely with the answer, and he did own it.

Sir G. Treby. How did he own it, Sir?

Brooks. I had some communication with my lord of Ely, about the substance of that letter, and therefore I apprehended he owned it.

Just. Powell. That's a strange inference, Mr. Solicitor, to prove a man's hand.

Att. Gen. We have more evidence; but let this go as far as it can.

Serj. Pemberton. Certainly, my lord, you will never suffer such a witness as this?

L. C. J. Brother Pemberton, I suppose they can prove it otherwise, or else this is not evidence.

Just. Powell. So they had need, for it is a strange inference of Mr. Solicitor, that this is a proof of my lord of Ely's hand-writing.

Just. Holl. The bishop of Oxon was dead before any of this matter came in agitation.

Sol. Gen. My lord, we will bring other proofs. Call Mr. Chetwood and Mr. Smith.

[Mr. Chetwood and Mr. Smith sworn.]

Sol. Gen. Mr. Chetwood, we would know of you if you know my lord bishop of Ely's hand-writing?

Chetwood. I never saw him write.

Sol. Gen. That's not an answer to my question: do you know his hand-writing?

Chetwood. I do not certainly know it.

Sol. Gen. Have you seen any of it?

Chetwood. I have seen my lord of Ely's writing, that has been said to be his.

L. C. J. But surely you had better take a witness that has seen him write.

Just. Powell. I think it is hardly possible for a man to prove his hand, that has not seen him write.

L. C. J. I think it is better proof indeed, to bring some that has seen him write.

Chetwood. My lord, it is a long time since I saw my lord of Ely's writing.

L. C. J. Pray bring some other proof, if you have it.

Bishop of Peterborough. My lord, we are here as criminals before your lordship, and we are prosecuted with great zeal: I beg your lordship that you will not be of counsel against us, to direct them what evidence they shall give.

L. C. J. My lord of Peterborough, I hope I have not behaved myself any otherwise hitherto than as becomes me: I was saying this (and I think I said it for your lordship's advantage,) that this was not sufficient proof; and I think, if your lordship observed what I said, it was for you, and not against you.

Bishop of Peterborough. It was to direct them against us, how they should give evidence.

Serj. Pemberton. Pray, my lord of Peterborough, sit down, you'll have no wrong done you.

VOL. XII.

Sir R. Sawyer. We that are of counsel will take care of that; and pray, my lord, will you please to pass it by?

L. C. J. We are not used to be so served, and I will not be used so.

Sol. Gen. If your lordship pleases to pass that by; for what your lordship said was in favour of my lords the bishops; but I see they do not take it so.

Att. Gen. Pray, Mr. Chetwood, do you look upon the name of my lord of Ely; do you believe that to be his hand-writing?

Chetwood. I do believe it is.

Sir R. Sawyer. That's very well, when he says he never saw him write.

Just. Powell. What is the reason of that belief of his I would fain know?

Chetwood. I have formerly seen his hand, I think it was his; but I never saw my lord of Ely write his hand.

Sir R. Sawyer. Then the question is, whether this be evidence?

Mr. Finch. How do you know that that which you saw formerly was my lord of Ely's hand?

Chetwood. I have no such certainty as positively to swear that that was his hand.

Sol. Gen. We will go on to other proofs, and if we want better evidence at the end, we will argue with them.

Chetwood. I am not certain that what I saw was my lord of Ely's hand-writing, because I never saw him write.

Sol. Gen. You do very well to shew your good affection.

Att. Gen. Mr. Smith, I would ask you this question, do you know my lord of Ely's hand-writing?

Mr. Smith. I have seen it often.

Att. Gen. Look upon the name of my lord of Ely in that paper; do you believe it to be my lord's hand-writing or no?

Smith. I did not see him write it, Sir; I cannot tell whether it is or no.

L. C. J. Did you ever see his name?

Smith. Yes, but it was a great while ago, and here are but seven letters, and I cannot judge by that: I was better acquainted with his hand-writing heretofore.

Sol. Gen. Pray, Sir, answer me; do you believe it to be his writing, or do you not?

Smith. I believe it may; for I did not see him write it.

Sol. Gen. But my question is, do you believe it, or do you not?

Smith. I say I was better acquainted with it heretofore than I am now.

Sol. Gen. But pray answer my question; do you believe that to be my lord of Ely's hand-writing, or do you not?

Smith. I believe it may, Sir.

Sir R. Sawyer. Why do you believe it?

Smith. I have no other reason to believe it, but because I have seen something like it.

Just. Powell. How long ago is it since you saw him write?

Smith. I have not seen him write, so as to

U

take notice of it, for some years, I could better judge of it when he writ his name Turner, than now it is Ely, because there was more letters to judge by. [Mr. Middleton sworn.]

L. C. J. Here's Mr. Middleton; what do you call him for?

Sol. Gen. To prove many of their hands.

Att. Gen. Pray shew him that paper.

Sol. Gen. First, Mr. Middleton, do you know my lord archbishop's hand-writing?

Middleton. I have seen his grace's hand-writing.

Sol. Gen. Do you believe it to be his?

Middleton. It is very like it.

Sol. Gen. But do you believe it, or do you not?—Middleton. I do believe it.

Sol. Gen. Do you know my lord bishop of St. Asaph's hand-writing?

Middleton. I never saw it as I know of.

Sol. Gen. What do you say to my lord of Ely? His name is next.

Middleton. It is like his lordship's hand.

Sol. Gen. Do you believe it, or do you not?

Middleton. It is like it, that's all that I can say.

Sol. Gen. Cannot you tell whether you believe it, or not believe it?

Middleton. I do believe it is his hand.

Sol. Gen. Did you ever see him write? For I would clear this matter beyond exception.

Middleton. I have seen his lordship write, but I never stood by him so near as to see him make his letters.

Sol. Gen. Is that his hand-writing?

Middleton. It is like it, I believe it is his.

Sol. Gen. You did not guide his hand, I believe. Do you know my lord of Chichester's hand-writing?

Middleton. Sir, I am acquainted with none of their hands, but with my lord of Canterbury's, and my lord of Ely's.

Sol. Gen. Do you know my lord of Peterborough's hand-writing?

Middleton. I had my lord of Peterborough's writing two years ago for some money, but I cannot say this is his.

Sol. Gen. Do you believe it to be his?

Middleton. I never took notice of it so much as to say, I believe it to be like it; I never saw it but once.

Sol. Gen. Do you know any other of the names there? What say you to the bishop of Bristol's name?

Middleton. I saw once my lord of Bristol's hand-writing.

Sol. Gen. What say you to that writing there?

Middleton. It is like it.

Sol. Gen. Do you believe it to be his, or no?

Middleton. Truly, that I cannot say, for I never saw it but once.

L. C. J. You never saw him write, did you?

Middleton. No, my lord, I never did.

Sol. Gen. Then we will call sir Thomas Pinfold, and Mr. Clavel. Sir Thomas Pinfold is there, swear him. [Sir Thomas Pinfold sworn.]

Sol. Gen. Sir Thomas Pinfold, do you know my lord bishop of Peterborough's hand-writing?

Sir T. Pinfold. Truly, not very well; I never saw but one letter from him in my life: shew me his hand, and I will tell you—[Which was done.]

Sol. Gen. Well, Sir, what say you to it?

Sir T. Pinfold. Then upon my oath, I say, I cannot well tell upon my own knowledge that it is his hand.

Sol. Gen. I ask you, do you believe it to be his hand?

Sir T. Pinfold. Sir, upon the oath that I have taken I will answer you, that upon this account, that I have heard there was a Paper delivered by my lords the bishops to the king, and this paper that you offer me, I suppose to be the same; upon that score I do believe it, but upon any other score I cannot tell what to say.

Sol. Gen. I ask you upon your oath, Sir, do you believe it is his hand-writing or no?

Sir T. Pinfold. Sir, I have answered you already, that upon my own knowledge I cannot say it is his hand-writing; but because I have heard of such a Paper, I do believe it may be his.

L. C. J. Did you ever see my lord bishop write?

Sir T. Pinfold. I have been in his chamber several times when he has been writing, but I had more manners than to look upon what he writ.

L. C. J. Did you never see him write his name?

Sir T. Pinfold. I do not know that I ever saw him write his name, but I have seen him writing, I say, and so my lord bishop may have seen me writing, but I believe he does not know my hand.

Sol. Gen. You have seen him write, you say?

Sir T. Pinfold. I tell you, Mr. Solicitor, I have been in his chamber when he has been writing, but I had more manners than to look over him.

Just. Powell. Then you did never see any of that writing

Sir T. Pinfold. I cannot say, I did, my lord.

Att. Gen. Pray did you never see any of his writing but that letter you speak of?

Sir T. Pinfold. No, not that I remember.

Just. Powell. Mr. Solicitor, you must call other witnesses, for this does not prove any thing.

Att. Gen. We will go on. Swear Mr. Clavel. [Mr. Clavel sworn.]

Sol. Gen. Do you know my lord bishop of Peterborough's hand-writing, or no?

Mr. Clavel. I have seen it many times.

Att. Gen. Do you know it when you see it?

Clavel. I believe I do, Sir.

Sol. Gen. Pray look upon that Paper, and upon your oath tell us, do you believe that name to be his writing or no?

Clavel. I do believe it is, my lord.

Att. Gen. Pray look upon the rest of the

hands there, do you know any of the other names?—*Clavel*. No, I do not.

Att. Gen. Have you ever seen any of their writing?

Clavel. It is probable I may have seen some, but do not now remember it.

Sol. Gen. I think you are a bookseller, Mr. *Clavel*?—*Clavel*. Yes, I am so, Sir.

Sol. Gen. I suppose you have had some dealings with them in the way of your trade. Did you never see any of their writing?

Clavel. I have seen the names of some of them, but is so long since that I cannot remember.

L. C. J. Did you ever see my lord of Peterborough write?

Clavel. I cannot tell whether I ever saw him write his name or not; but I have had several letters from my lord of Peterborough.

Sol. Gen. Is that his hand-writing?

Clavel. I cannot say it is, I believe it is.

Sol. Gen. You have had letters from him you say?

Clavel. Yes, and it seems to be like his hand.

Mr. Pollexfen. But you never saw him write his hand, you say?

Clavel. I cannot say I ever did.

Sol. Gen. These letters that you have received from my lord of Peterborough, did he own them? Do you think they were counterfeit, or of his own hand-writing?

Clavel. I suppose he has owned them, Sir.

Just. Powell. But you must answer directly, Sir, did he own them?

Sol. Gen. What did those letters concern? Were they about books, or what?

Clavel. They were sometimes about one business, sometimes about another.

Sol. Gen. Was the subject matter of any of these letters about money, and was it paid you? Did you receive, or did you give any account of it?—

Clavel. They were about several businesses.

L. C. J. Look you, Mr. *Clavel*, you must give us as particular account as you can.

Sol. Gen. Pray, Sir, upon those letters were the things done that those letters required?—*Clavel*. Yes, they were.

Sol. Gen. Did you do your part?

Clavel. Yes, I did.

Sol. Gen. Now, I would ask you, do you believe that name of my lord bishop of Peterborough to be the hand-writing of my lord bishop?—*Clavel*. I believe it is.

Just. Powell. Do you know that those letters that you say you received from my lord, were of my lord's own hand-writing? Do you swear that?

Clavel. My lord, I cannot swear that.

Mr. Finch. Do you know whether the letters that you received, as you say, were written by my lord himself, or by his secretary?

Clavel. I have received letters from him, and his secretary too.

Sir George Treby. But were you present

with him when he writ any letters with his own hand?

Sol. Gen. You do not mean a letter to yourself sure, sir George?

Sir George Treby. No, Sir, I say any letters.

Clavel. I have been present with my lord often, but I cannot say I have seen my lord write.

L. C. J. He has here told you, he has had several letters of my lord's own hand, and from his secretary too.

Just. Powell. He has said it, but you see he says he never saw him write.

Sol. Gen. We have given evidence against my lord archbishop, lord bishop of Ely, St. Asaph, Peterborough, and Bristol.

Just. Powell. Certainly, Mr. Solicitor, you mistake. But go on.

Sol. Gen. We have given evidence I say against them, Sir, but whether it be sufficient evidence, we shall argue by and bye. Call Mr. Hooper and Mr. Chetwood again. [Mr. Chetwood appeared.]

Sol. Gen. Do you know the hand-writing of my lord bishop of Bath and Wells?

Chetwood. I have seen it twice or thrice, but it is a considerable time since I did see it.

Sol. Gen. Do you believe that is his hand-writing?

Chetwood. I never saw him write his name in my life.

Sol. Gen. Pray look upon the name, and tell us what you believe of it.

Chetwood. I believe it may, but I do not certainly know it to be his hand; I rather believe it is my lord bishop of Bath and Wells his hand, than I believe that other to be my lord of Peterborough's.

Sir George Treby. Do you believe that to be my lord of Peterborough's hand, or no?

Chetwood. I say, I rather believe that this is the bishop of Bath and Wells his writing, than that which is above it or below it, to be their writing; but truly I do not distinctly know my lord bishop of Bath and Wells his hand.—*Sol. Gen.* Call Mr. Hooper.

L. C. J. You are very lame in this matter.

Sol. Gen. The witnesses are unwilling, and we must find out the truth as well as we can. [Mr. Hooper did not appear.]

Sol. Gen. Call Mr. James and Mr. Powell. [Mr. James appeared and was sworn.]

Sol. Gen. Do you know my lord bishop of Bristol's writing, Mr. James?

James. Yes, I believe I do, but I am not so certain, because my lord writes several times several hands.

Sol. Gen. Shew him the paper: is that my lord of Bristol's hand?

James. I cannot say it is or no.

Sol. Gen. What do you believe?

James. It looks like his hand, and that's all I can say.

Sol. Gen. But pray hearken, and answer to what I ask you; you are prepared for one question it may be, and I shall ask you ano-

ther: upon your oath, do you believe it to be the hand-writing of my lord of Bristol?

James. Upon my oath, I can only say it looks like it, that's all.

L. C. J. Did you ever see him write?

James. Yes, my lord, I have seen his hand-writing several times, and it is like his hand-writing, that is all I can say.

Sol. Gen. Sir, remember you are upon your oath, and answer my question.

James. Upon my oath, I know no more than that, sir William Williams.

Sol. Gen. I ask you, sir, whether you believe it to be his hand or not?

James. My lord, it looks like his hand, and it may be his hand.

Att. Gen. But do you think and believe one way or other: what do you believe?

James. It may be his hand for what I know, and it may not.

Sol. Gen. It may be your hand.

James. No, Sir, it cannot be mine, I am sure.—*Sol. Gen.* What do you believe?

James. I believe it may be his hand, or it may not be his hand, that is all I can say.

L. C. J. Come, Sir, you must answer fairly. Do you believe it to be his hand, or do you not.—*James.* Yes, I do believe it.

Att. Gen. You are very hard to believe, methinks.—*James.* No, I am not.

Sol. Gen. You do very well now, Mr. James; when you do well, we'll commend you.

Att. Gen. Call Mr. Nathaniel Powell. [Mr. Powell was sworn.]

Sol. Gen. Pray, Sir, let's know what's your name?

Powell. My name is Nathaniel Powell.

Sol. Gen. Pray do you know the hand-writing of my lord bishop of Chichester?

Powell. I have not seen the paper, Sir.

Sol. Gen. Do you know his hand-writing.

Powell. Yes, I believe I do.

Sol. Gen. Look upon that name of his.

Powell. I did not see my lord write that.

Sol. Gen. Who says you did? You were not asked that question; how you answer! Pray, Sir, remember your oath, and answer the question asked you, seriously; do you believe it to be his writing or no?

Powell. I believe it is like my lord's hand-writing, but I never did see him write it.

Sol. Gen. No man says you did.

Powell. Therefore I cannot swear positively it is his hand.

Sol. Gen. We do not ask that neither.

Powell. I cannot tell whether it be his hand or no.

L. C. J. Sir, you must answer the question directly and seriously: do you believe it, or do you not believe it?

Powell. I cannot tell what to believe in the case.

Sol. Gen. Then I ask you another question, upon your oath, do you believe it is not his hand?—*Powell.* I cannot say that neither.

Sol. Gen. Once again, I ask you, upon

your oath, do you believe it to be his hand? I ask you plainly, and let mankind judge of your manner of swearing.

Powell. I tell you, Sir, I cannot tell what to believe.

Sol. Gen. My lord, if these things be endured, there will be an end of all testimony, if witnesses do not answer fairly to the questions that are asked them.

Just. Powell. Truly to me, for a man to swear his belief in such a matter, is an extraordinary thing.

Sol. Gen. He is obliged to answer questions when they are fairly put to him; and in proving of hands this is the usual question, and few can answer otherwise than as they believe.

Mr. Pollexfen. I think that is a hard question, not to be answered.

Sol. Gen. Make your exceptions to the evidence if you please.

L. C. J. First he says, he knows his hand; then he says, he has seen him write; and then he says, he did not see him write this; but he shuffles, he won't answer whether he believes it or not.

Mr. Pollexfen. The question is, Whether belief in any case be evidence?

Sol. Gen. If they have a mind to a bill of exceptions upon that point, let them seal their bill, and we'll argue it with them when they will; in the mean time we'll go on, and that which we now pray, my lord, is, that this paper may be read.

Att. Gen. We have given sufficient evidence sure to have it read, therefore we desire it may be read.

Serj. Levinz. My lord, before this paper be read, we hope you will let us be heard to it: we think that what they desire (to have this Paper read) ought not to be: for what is all the proof that they have given of this paper? They have a proof by comparison of hands, which in a criminal case ought not to be received: and besides, my lord, what is that comparison of hands that they have offered? Some persons come here and say, they cannot tell whether it be their hands, they believe it may or may not, for aught they know; how shall we convict any man upon such a testimony as this? Can we have our remedy against him for perjury, for saying, he believes it to be our hand? Therefore here is not any evidence to charge us. For first, It is only a comparison of hands; and secondly, that comparison is proved in such an uncertain manner: some of them tell you, they do not know what to believe; another tells you, I believe it is rather such a lord's hand, than the others are such a lord's hand; I believe 'tis rather his hand than that above it, or that below it. What sort of proof is all this? Therefore we pray it may not be read, till they prove it better.

Serj. Pemberton. Pray, my lord, spare me a word or two in this matter for evidence sake: there is a great deal of reason we should take exceptions to the evidence that has been given:

for truly, I think I never heard such a sort of evidence given before. It is a case of as great concernment as ever was in Westminster-Hall; and for them to come to prove hands only by those that saw letters, but never saw the persons write, this, I hope, will not amount to so much as a comparison of hands. Your lordship knows, that in every petty cause, where it depends upon the comparison of hands, they use to bring some of the party's hand-writing which may be sworn to, to be the party's own hand, and then it is to be compared in court with what is endeavoured to be proved, and upon comparing them together in court, the jury may look upon it, and see if it be right; and never was there any such a thing as this admitted in any poor petty cause, that is but of the value of forty shillings. And therefore as to this evidence, first, We say comparison of hands ought not to be given at all in the cases of criminals; and I believe it was never heard of that it should. In the next place, if it be admitted to be evidence, yet it is not such an evidence, as that by comparison of hands the jury can take notice of it; for in such manner of proofs by comparison of hands, the usage is that the witness is first asked, concerning the writing he produces, Did you see this writ by the defendant, whose hand they would prove? If he answers, Yes, I did, then should the jury upon comparison of what the witness swears to, with the paper that is to be proved, judge whether those hands be so like as to induce them to believe that the same person writ both; and not that the witness should say, I had a letter from such a person, and that is like the hand of that letter, therefore I believe it to be his hand: my lord, I hope this shall never be admitted for evidence in this court.

L. C. J. I do take it, that the witness himself is judge of the comparison; for if he does know the party's hand, and a paper be offered him to prove the party's hand, he is to compare it in his own mind.

Serj. Pemberton. It never was admitted to be so, that I know of, my lord, or ever read of.

Sol. Gen. You may remember several cases about that, particularly Mr. Algernon Sidney's Case.* The principal evidence against him to prove him guilty of treason, was by comparison of hands and believing evidence.

Mr. Pollexfen. Pray, my lord, hear me a little as to that: it is a point of very great moment, whether in the case of a misdemeanor, either in an indictment or information, it be good evidence to offer comparison of hands;† and that this court did adjudge quite contrary upon an indictment of forgery against my lady Carr, appears in Syderfin's Reports: they went to prove her letters written by her to Cox; the court rejected it, and gave their judgment here, that it was no evidence; and that for this reason, because of the evil consequences of it: for, said they, it is an easy matter for any man's

hand to be counterfeited; that they sure will agree, for frequent daily experience shews how easily that may be done: is it not easy then to cut any man down in the world, by proving it like his hand? And proving that likeness by comparing it with something that he hath formerly seen? This strikes mighty deep; the honestest man in the world, and the most innocent may be destroyed, and yet no fault to be found in the jury or in the judges; if the law were so, it would be an unreasonable law. Next, my lord, for the case of Sidney, that was a case of treason. Now in the case of treason there is always other evidence brought; and this evidence comes in but as a collateral evidence, to strengthen the other; but in this case it is the single evidence, for aught that appears, for there is nothing more, for aught I can see, in the case, but whether this were their hands, and proved only by what another believes: now shall any be condemned by another's belief without proof? Surely, my lord, that was never evidence yet to convict any one; so that their proof fails in both points; for first, it ought to be considered, whether a comparison of hands be evidence in a case of misdemeanor? And next, if it be evidence, whether you will take it, that the belief of a man that brings nothing to compare with it, or never saw the party write, but has received letters, and says, this is like it, and therefore he believes it to be his hand, be good evidence as a comparison of hands.

Serj. Pemberton. My lord, they are pleased to mention—

Sol. Gen. Mr. Serjeant, you have been heard already, and you are not to reply upon us; or if you would we must be heard first.

Serj. Pemberton. I would only speak to that case of Sidney: My lord, that case differs from this *toto calo*, the writing was found in his possession, in his study; there was the proof that nailed him.

Sol. Gen. You shall see how we'll apply it by and bye.

Att. Gen. Pray, my lord, favour me a word in this matter: that there is stronger and weaker evidence, no man doubts; but that which these gentlemen say, that in this case there is no evidence, must needs be a mistake. If they mean that it is not so strong an evidence as is possible to be given, I agree with them, it is not: for if we had brought three or four men that had seen them write this very paper, and put their names to it, that had been a stronger evidence than this that we have given; but whether we do not give such a sort of evidence as may induce the jury to believe that this is their paper, and their hands to it, we submit. They say, this is such a method as never was taken; but I admire that that should be said by men of their experience and knowledge in the law; for is there any thing more usual, or any other course taken for the proof of hands, than for a witness to say, He knows the hand of the party very well, for he has often seen his hand-writing, or received letters from him?

* See this Case, vol. 9, p. 817.

† See in this Collection, vol. 8, p. 364.

And then you shew him the thing that you would prove to be his hand, and he says, I do believe this to be his hand, for this reason, because I have had other things of his writing; certainly, in the experience of any man that has practised, this is an evidence that is given every day, and allowed for evidence. For the case of Mr. Sidney, which your lordship has heard mentioned, it is certainly very apposite to this purpose; it is insisted upon and pretended, that that was evidence, because it was found in his study: but without all doubt, that would not be the reason: for may not a book of another man's writing be found in my study? And he insisted upon it in his own defence: but the answer was, that it should be left as the question, whether the jury would believe it upon the evidence that was given, of its being his own hand-writing: and so in this case, though it be not so strong evidence as if we had brought those that had seen them write it; yet evidence it is, and whether it be sufficient to satisfy the jury, may be a question, but no question it is good evidence in law.

Sol. Gen. It is a wonderful thing, they say, that such evidence should be offered: but truly, my lord, it is a much stranger thing to hear Mr. Serjeant Pemberton say, it was never done before; and then to make that remark to your lordship upon the case of Mr. Sidney, which I'll put to your lordship and the court as a case, and let him contradict me if he can; and then you shall see how far it goes. Mr. Sidney was indicted for high treason; and the high treason insisted upon at his trial in this court was, a writing that was supposed to be his, it being found in his study: the question was, Whether it was his hand-writing or not, there was no positive proof that it was his hand-writing; there was no person produc'd that prov'd it to be his hand-writing; for there was no person that swore he saw him write it; there was nothing proved but the similitude of hands, to make the jury believe it his hand-writing. Ay, but, says Mr. Serjeant Pemberton, it was found in his study. Will Mr. Serjeant Pemberton be content, that all the libels that are found in his study, shall, for that reason, be adjudged to be his libels, to be his hand-writing, and him to be a libeller for them? I think he would make a severe declamation against that sort of evidence, and he would have very good reason for it: certainly, that which is evidence in one man's case, will be evidence in another's. God forbid there should be any such distinction in law; and therefore I conclude, that this is good evidence, unless a lighter evidence will pass in this court to make a man guilty of treason than of misdemeanor.

Serj. Pemberton. The court went upon this, that it was found in his study, and compared with letters and bills of exchange produced in court, which were sworn to be of his hand-writing.*

* According to the Report of Sidney's Trial in this Collection, Shepherd swore that he was

Sol. Gen. My lord, I was by all the time; for I was ordered to attend him in the Tower; for one of his counsels attended too at his trial but was not heard; and therefore I can tell what passed. My lord, they proved no more as to that paper, but by comparison of hands; they had no other proof in that case, but by comparing the hand-writing; and that was insisted upon to be a very fallible thing: that which they would have us do in this case to compare paper with paper, it is true, would make the proof somewhat stronger, if we could, in such a case as this, be able to produce such evidence.* But I appeal to your lordship, and shall leave it to the jury, to consider which is better evidence; these men that have been produced, that have been conversant with my lords the bishops, and acquainted with their hand-writing, and who (as your lordship sees) are no willing men to give evidence against my lords the defendants, they avoid it as much as they can; yet they swear all the writing to be the hand-writing of my lord archbishop of Canterbury, as they believe; which is as far as any man can swear that did not see him write. One says, the whole body of the paper is my lord of Canterbury's hand, and he knows it very well; so that we are not giving evidence upon a single name, but upon the whole paper that contains many lines; and this is as much as can be proved by any one that did not see the thing written. Then, my lord, for the rest of my lords the bishops, the evidence is not so strong against every one of them, as it is against my lord archbishop; but it is strong enough, I suppose, to induce the jury to find this writing to be signed as we allege by my lords the bishops; and pray, my lord, what was the objection in Mr. Sidney's case, but what has been mentioned here? That any man's hand might be counterfeited. I remember in that case, Mr. Wharton,† a person of honour then in the court, upon perusal of the writing, charged to be Mr. Sidney's hand-writing, undertook to the court, that he would imitate the hand-writing produced, so that he that was to swear it was Mr. Sidney's, should not know which was the real, and which the counterfeit; which certainly was a stronger case than this; and I see some of the learned gentlemen now standing at the bar, who pressed

acquainted with colonel Sidney's hand; that he became acquainted with his hand by seeing him write the indorsement upon several bills of exchange, and that he believed all the sheets produced to be Sidney's hand. See vol. 9, p. 854.

* In sir W. W.'s MS. the words 'it is true' 'would make the proof somewhat stronger if' 'we could in such a case as this be able to' 'produce such evidence,' are obliterated, and these following are substituted, 'and so prove' 'this paper by another writing of my lords the' 'bishops it is true would perhaps help the evidence, but it is not necessary.'

† See vol. 9, pp. 844. 876.

that evidence by comparison of hands very hard against Mr. Sidney to prove him guilty, and Mr. Sidney lost his life upon that comparison of hands; though Mr. Wharton did testify how easy a matter it was to have a man's hand imitated or counterfeited, and that even in that writing then given in evidence, yet it was not then regarded by the court, and we all know Mr. Wharton was a man of value and quality; so that there is a precedent for Mr. Serjeant Pemberton, that never heard of this law before. They say the proving of the similitude of hands is no evidence, unless you prove the actual writing; what a condition then would England be in, when witnesses to the actual writing are dead? Is it not the most common practice that can be, to produce witnesses to prove such men are dead, whose names are set as witnesses to deeds; and they swear, they believe it to be the hand-writing of those witnesses? Can there be any better evidence in such a case, unless it be the confession of the party himself, whose deed it is? My lord, we are now only upon reading this paper. We have been heard, and they have been heard; now we pray the paper may be read.

Recorder. We pray it may be read.

Serj. Levinz. If your lordship please—

Sol. Gen. We are not to be replied upon, Mr. Serjeant.

L. C. J. You have spoke, brother Levinz, and you have spoke, brother Pemberton, and I would willingly hear you what you have to say; but we must not have vying and revying, for then we shall have no end.

Serj. Levinz. I would offer your lordship some new matter, which has not been touched upon yet, why it is not to be read.

L. C. J. What's that, brother?

Serj. Levinz. All the proof that has been given, whatsoever it amounts to, has been only of its being written, but no proof has been given of its being written in the county of Middlesex, where the information is laid, and the matter is local.

Sol. Gen. First read it, and then make your objection.

Recorder. My lord, as to the evidence that has been given, I would only put your lordship in mind of one case; and that was the case of sir Samuel Barnardiston;* and the great evidence there, was the proof of its being his hand-writing; and that being proved, was sufficient to convict him of a libel; for they could not believe sir Samuel Barnardiston was guilty of making libels, unless they were proved to be his hand-writing.

Sir R. Sawyer. He owned them to be his hand-writing.

L. C. J. If you do expect my opinion in it, whether this be good evidence, and whether this paper be proved or no, I am ready to give it.

Mr. Finch. My lord, I desire to be heard before the opinion of the court be given.

Sol. Gen. If there be not proof enough to induce the jury to believe this is their paper, yet sure there is enough to read it.

Sir R. Sawyer. My lord, we have not been heard to this yet.

Sol. Gen. Why, is this fit to be suffered?

L. C. J. Mr. Solicitor, I am always willing to hear Mr. Finch.

Sol. Gen. But I hope your lordship and the court, are not to be complimented into an unusual thing!

Serj. Pemberton. It is not a compliment, but right and justice.

Sol. Gen. Certainly it is right and justice, that there should be some limits put to men's speaking, that we may know when to have an end.

Sir R. Sawyer. Mr. Solicitor does mistake the right, my lord, for we desire to be heard to this point, as not having spoke to it yet.

Sol. Gen. Pray, Sir, let me make my objection to your being heard: for I believe you and I have been chid several times, for speaking over and over the same thing.

Sir R. Sawyer. This that we now offer, is not to the same point that we have spoken to already.

Sol. Gen. We are now speaking to the reading of the paper, and you have spoken to it already.

Sir R. Sawyer. If the court will please to hear us, we have that to offer against the reading of the paper, which has not been offered yet.

L. C. J. Sir Robert Sawyer, I take it, it is in the breast of the court to hear when they will, and as much as they will, and whom they will; for if three or four have been heard of a side to speak what they will, the court may very well depend upon the learning of those three or four, that they say what can be said upon the point, and that's enough; but if six or seven desire to be heard over and over to the same thing, certainly the court may stop at three or four, if they will.

Sir R. Sawyer. This is a new objection that none of us have been heard to yet.

Mr. Finch. My lord, that which I offer is not contrary to the rules of law, nor contrary to the practice of the court; nor was I going any way to invade that privilege which Mr. Solicitor claims of making objections, and not receiving an answer.

Sol. Gen. What a fine declamation you have now made! I never claimed any such right; but I oppose your being heard over and over to the same thing.

Att. Gen. Pray, my lord, let's come to some issue in this matter.

L. C. J. I will hear you; but I would not have you introduce it with a reflection upon the king's counsel.

Sol. Gen. My lord, if you impose that upon him, you stop his mouth; for some men cannot speak without reflection.

L. C. J. On the other side, pray, Mr. Solicitor, give us leave to hear fairly what they

* See this Case, vol. 9, p. 1335.

have to say; for I perceive he cannot offer to speak, but you presently stop his mouth.

Mr. Finch. My lord, that which I was going to say, is another matter than any thing that has been yet offered: we say, that this paper ought not to be read; for that they are obliged by law to prove their information; and consequently, having laid a particular place where the thing was done in the information, they ought to prove that this was done in that place. The evidence that they have given, is of my lords the bishops writing this paper; and they have laid it to be done in Middlesex. And this, with submission to your lordship, is local; and they must prove it to be written in Middlesex, where they have laid it, or else they fail in their proof. This is another objection, which as yet hath not been spoken to: that if there be a proof of their hand-writing, yet there is no proof where that hand was written; and therefore they are not yet got so far, as to have it read against my lords.

Att. Gen. For that point, my lord, we say, this would have been as properly said after the paper had been read, when they come to make objections against our proof, by way of defence: and, with submission, it had been more proper then, than it is now: for what are we now doing? My lord, we are proving that such a paper was subscribed by my lords the bishops; and sir John Nicholas gives you an account, that he had it from his majesty at the council; and that certainly is in the county of Middlesex; and it will concern you to prove that it was written elsewhere.

Serj. Pemberton. That's very well, Mr. Attorney; sure you do not think as you speak!

Att. Gen. Here is a paper composed and written by you, that sir John Nicholas says he had from his majesty: how he came by it, I suppose you will tell us by and bye. This is your hand writing, that I think we have proved sufficiently; this is found in the county of Middlesex, and you come and tell us, that we must prove that it was written in the county of Middlesex; and it is taken to be written where it was found, unless you prove the contrary.

Serj. Pemberton. That's pretty doctrine indeed, and very new.

Sol. Gen. My lord, here's an objection made too timely: we are now upon the reading of this paper; and the question is, whether it shall be read, or not be read? Surely we have given evidence enough to induce the court to read it; and it is another question that will come time enough afterwards, where it was written?

L. C. J. Truly, I do not think it was proper for you to stand upon the place where it was written as yet.

Serj. Levinz. When we are upon an information of a fact in Middlesex, will you hear them give evidence of a fact in Yorkshire?

Sol. Gen. We are not to be driven by these gentlemen: we are to be directed by the court.

L. C. J. I think truly it is yet too early to make this objection,

Serj. Pemberton. Surely, my lord, this is our time to oppose the reading of it, as not proved.

Just. Powell. Mr. Solicitor, I think you have not sufficiently proved this paper to be subscribed by my lords the bishops.

Sol. Gen. Not to read it, Sir?

Just. Powell. No, not to read it; it is too slender a proof for such a case. I grant you in civil actions a slender proof is sufficient to make out a man's hand, by a letter to a tradesman, or a correspondent, or the like; but in criminal causes, such as this, if such a proof be allowed, where is the safety of your life, or any man's life here?

Sol. Gen. We tell you a case where it was allowed; and that is Mr. Sidney's case; a case of treason, and printed by authority: We tell you nothing but what was done the other day.

L. C. J. I tell you what I say to it; I think truly there is proof enough to have it read, and I am not ashamed, nor afraid to say it; for I know I speak with the law. Say what you will of criminal cases, and the danger of people's lives, there were more danger to the government, if such proof were not allowed to be good.

Just. Powell. I think there is no danger to the government at all, in requiring good proof against offenders.

L. C. J. Here's my lord archbishop and the bishop of St. Asaph, and my lord of Ely, their hands are proved: it is proved to be my lord archbishop's writing by Mr. Brooks, and he proves my lord of Ely's hand by comparison, and so my lord of St. Asaph's. Now, brother Pemberton, there's an answer to your objection, it being proved that it is all my lord archbishop's hand. Then they come and say, We'll prove the hands of the others by comparison; and for that they bring you witnesses that say, they have received letters from them, and seen their hand-writing several times; and comparing what they have seen with this very paper, says the witness, I do believe it to be his hand. Can there be a greater evidence, or a fuller?

Serj. Pemberton. Admit it be a full evidence against my lord archbishop, what's that to the rest? There's no evidence against them.

Just. Allynbone. Brother Pemberton, as to the objection you make of comparing of hands, it is an objection indeed, I do agree; but then consider the inconvenience which you and Mr. Pollexfen do so much insist upon: if a man should be accused by comparison of hands, where is he? He is in a lamentable case; for his hand may be so counterfeited, that he himself may not be able to distinguish it. But then you do not consider where you are on the other side: That may be an objection in matters of fact, that will have very little weight, if compared and set altogether: for on the other side, where shall the government be, if I will make libels, and traduce the government with prudence and discretion, and all the secrecy imaginable? I'll write my libel by myself, prove

it as you can ; that's a fatal blot to the government ; and therefore the case is not the same, nor is your doctrine to pass for current here, because every case depends upon its own fact. If I take upon me to swear I know your hand, the inducements are to myself, how I came to know it, so as to swear it. Knowledge depends on circumstances : I swear that I know you, but yet I may be under a mistake ; for I can have my knowledge of you no other way but from the visibility of you, and another man may be so like you, that there is a possibility of my being mistaken ; but certainly that is evidence, good evidence. Now here are several gentlemen that swear as to my lord archbishop's hand-writing : I do agree, as to some of the others, that the evidence is not so strong ; for that man said, that he did believe it was rather such a lord's hand, than that which went before, or that which came after, it is of no weight at all, and so some of the others ; but it is positively proved against my lord archbishop and one or two more ; so that that's enough to induce the reading of this writing.

Just. *Holloway*. Good my lord, let me give my opinion.

L. C. J. Ay, with all my heart, brother.

Just. *Holloway*. My lord, I think as this case is, there ought to be a more strong proof ; for certainly the proof ought to be stronger and more certain in criminal matters, than in civil matters : in civil matters we do go upon slight proof, such as the comparison of hands, for proving a deed, or a witness's name, and a very small proof will induce us to read it ; but in criminal matters we ought to be more strict, and require positive and substantial proof, that is fitting for us to have in such a case ; and without better proof, I think it ought not to be read.

L. C. J. You must go on to some other proof, Mr. Solicitor ; for the court is divided in their opinions about this proof.*

* As to this proof by comparison of hands, see in Vol. 9, the Case of Algernon Sidney as already referred to.

In a late case (*Eagleton and Coventry ver. Kingston*) lord chancellor Eldon treated of this subject with great clearness and instruction as follows :

“ When I first came into the profession, the rule as to hand-writing in Westminster-hall in all the courts was this : You called a witness, and asked, whether he had ever seen the party write. If he said he had, whether more or less frequently, if ever, that was enough to introduce the subsequent question, whether he believed the paper to be his hand-writing. If he answered, that he believed it to be so, that was evidence to go to the jury. If he refused to answer to his belief, he was pressed, perhaps too much, to form a belief ; but if he would not go the length of belief, his evidence went for nothing. Or you might ask a witness, who had not seen him write for a length of

VOL. XII.

Sol. Gen. Then, my lord, we will come to the confessions of my lords the bishops ; and I hope that will be believed by all mankind.

Att. Gen. Truly, my lord, we did forbear

time, if you could not get a witness of a subsequent date. You might call one, who had not seen him write for twenty years ; and if he said, he believed, it was the writing of the person, that evidence might go to the jury ; but to be affected by all the rest of the evidence, as it is the nature of all evidence to be more or less convincing.

“ In *Horne Tooke's Case*, at the Old Bailey, [see it in this Collection, A. D. 1793], his hand was proved only by Woodfall, who had not seen him write for a great length of time. But that went only to the character of the evidence.

“ This rule was laid down with so much clearness, that till very lately I never heard of evidence in Westminster-hall of comparison of hand-writing by those, who had never seen the party write ; though such evidence had been frequently received in the Ecclesiastical Courts. The whole of this is very well put together in the *King v. Cator*, [4 *Espinasse's Nisi Prius Cases*, 117] ; the whole doctrine being contained in the arguments of counsel and the opinion of the judge. An Inspector of Franks at the Post-office was called ; who had acquired a habit of determining, whether any thing was written according to the natural manner of writing ; and accordingly permitting or not permitting the frank to pass. These persons were called to prove the signature to a bill of exchange upon their skill in hand-writing, merely upon the comparison of hands of a person they had never seen write. That evidence was admitted by lord Kenyon in one case. It was first introduced by Mr. Justice Buller. Looking back to *Sidney's Case*, and a great variety of others, it was held by the common law, that comparison of hands is not evidence. There is a case in point now, [*Brookbard v. Woodley*, *Peake's Nisi Prius Case*, 20], under the great name of Mr. Justice Yates, in which it was rejected, as inadmissible. Distinguishing the cases of terriers and old writings, &c. there is a principle here, that may account for the difference of practice in the Ecclesiastical Courts and the Courts of Common Law. Suppose, some of the jury cannot read ; how can they judge of the similitude ? In addition to that authority, in *Macfarlane v. Thoytes* [*Peake's Nisi Prius Cases*, p. 20. See also my Note of the Case of *Macfarlane v. Thoyts*, vol. 9, p. 864, of this Collection], it was held no evidence whatsoever.

“ In *Cator's Case*, without going through more, it was argued very much ; and it was held by baron Hotham, that it could not be evidence ; and there was another Case [*Cary v. Pitt*, 37 *Geo. 3.* *Peake's Law of Evidence*] before lord Kenyon, in which also it was refused. [As to this, the Reporter observes, ‘ A principal defect of this species of proof is,

X

that evidence, and would not have proceeded this way, if we had had fair play on the other side.

Sir R. Sawyer. Mr. Attorney, give us leave to defend our clients all the ways we can: I think we do nothing but what is fair: the court you see is divided, therefore we did not without reason insist upon it.

L. C. J. You must go on as you can, for they will put you upon it.

Att. Gen. Swear Mr. Blathwayt. [Mr. Blathwayt sworn.]

Sol. Gen. Pray hand the writing to him. [The writing shewn to him.]

‘that it gives no positive evidence of the fact, ‘that the party can write; which is, perhaps, ‘the proper object of the question, whether the ‘witness has seen him write. As to that fact, ‘the answer has the true character of evidence: ‘as the foundation of a familiarity with the ‘manner of writing sufficient to enable him to ‘speak to his belief, it can scarcely have effect, ‘without farther enquiry not merely as to the ‘point of time, which is very material, but ‘also upon the frequency and degree of his ‘observation, involving many important circumstances. If the ground of opinion was ‘investigated, it would probably in most instances appear to be drawn rather from correspondence than from actual observation of ‘the art of writing.’]

“These later cases appear to have brought back the law to the state, in which it stood 25 years ago. I doubt the authority of the Case of Garrels v. Alexander, [4 Esp. Nisi Prius, Case 37]; where, if a man will not take upon him to say, he believes it to be the writing of the person, but says, he thinks it like, lord Kenyon is made to say, that is evidence. I doubt that. Formerly that would not have been deemed evidence. The evidence of hand-writing being of this nature, it is evidence in itself, the credit of which must be affected by and depend much upon the circumstances, as they come out in the course of the case. A man may come into court with the firmest belief as to the hand-writing; and in the course of the cause he may be convinced conscientiously, that his belief was founded in error. You cannot therefore avoid having regard to circumstances; and it is not necessary, that there should be evidence both on the part of the plaintiff and the defendant; for if the evidence for the plaintiff does not satisfy the jury, they are at liberty to say, in their conscientious opinion it is a mistake. No contradictory evidence therefore is necessary upon the part of the defendant, if the other evidence leads the jury to disbelieve it. A singular circumstance applicable to this point, happened to me: A deed was tried in Westminster-hall, stated to have been executed under circumstances, throwing a good deal of blot upon the persons who had obtained it. The Solicitor, who was a very respectable man, said, he felt satisfaction, that there were respectable witnesses. One was the town-clerk of Newcastle; and I

Sol. Gen. Have you seen that writing formerly, Sir?—Blathwayt. Yes, Sir.

Sol. Gen. What did you hear my lord archbishop say about that paper?

Att. Gen. And the rest of my lords the bishops?

Sol. Gen. First, we'll ask, as to my lord archbishop; did he own it to be his hand-writing?

Blathwayt. My lord, I believe this to be the paper that my lord archbishop did own to be subscribed by him.

Sol. Gen. When was it owned by him?

was the other. I could undertake to a certainty, that the signature was not mine; having never attested a deed in my life. He looked back to my pleadings; and was sure it was my signature; and, if I had been dead, would have sworn to it conscientiously. Suppose I had been out of the kingdom, and had come into Westminster-hall during the trial, and had positively sworn that I never attested a deed in my life, would it not have been competent to the jury or witness to say, that it was a mistake? That instance proves, that testimony of hand-writing must be open to the consideration of circumstances at common law.

“It cannot be doubted that it is so in the Ecclesiastical Courts, upon looking into the books.” See 8 Vesey, jun. 473.

1 Fountainhall's Decisions, 196.

“November 24, 1682. At Criminal Court; one Woodburn is pannelled for being at the rebellion at Bothwel-bridge: Alledged, he had taken the benefit of his majesty's Proclamation of Indemnity and Pardon to all who would subscribe the bond never again to rise in arms against his majesty, which he had *debito tempore* signed, and so was free. Answered, The subscription of his name at that bond, produced as taken by the earl of Caruath having power there, was not his, but there was a notary who had affixed the names of near one hundred persons to the said bond as if it had been their own subscriptions, and he had put this Woodburn's subscription with the rest; and by this pious fraud he had brought off and saved many of them; though he was not commissioned to sign for them. Woodburn offered to abide at the truth of the subscription as his. The king's advocate offered to improve it as false; so that here *questio falsi* became *incidenter prejudicialis*, and behoved to go before the crime of treason libelled *principaliter*. It seemed odd and new to offer to improve that as false which a man abode by as truly subscribed by him; yet a writ may be proven false against one *quoad datum*, where one claims benefit by it. There were pregnant presumptions against Woodburn, for his present subscription differed *toto calo* from that other; yet in a short time a man's hand-writing may alter much.”

See, too, Mackenzie's Criminals ('Probation by Writ') part 2, tit. 25, s. 3, as referred to in a Note, vol. 10, p. 764, of this Collection.

Blathwayt. On the council-day the 8th of this month.

Sol. Gen. Where was it owned? because we would obviate that objection of the county.

Blathwayt. It was at the council-table at Whitehall.

Sol. Gen. What say you to the bishop of St. Asaph? Did he own it?

Blathwayt. Yes, all my lords the bishops did own it.

Sol. Gen. Name them particularly. What say you of the bishop of Ely?

Blathwayt. In the same manner, my lord.

Sol. Gen. The bishop of Chichester?

Blathwayt. In the same manner.

Sol. Gen. The bishop of Bath and Wells?

Blathwayt. Yes, my lord.

Sol. Gen. The bishop of Peterborough?

Blathwayt. Yes, my lord.

Sol. Gen. And the bishop of Bristol?

Blathwayt. Yes, my lord.

Sol. Gen. So we have proved they all owned it.

Just. Holloway. Could not this have been done at first, and saved all this trouble?

Sir R. Sawyer. Have you done with Mr. Blathwayt, Mr. Attorney, that we may ask him some questions?

Att. Gen. Ask him what you will.

Serj. Pemberton. Pray, Mr. Blathwayt, upon what occasion did they own it? You are sworn to tell the whole truth: pray tell all your knowledge, and the whole confession that they made.

Blathwayt. My lord, I am called here by a Subpœna to answer on the behalf of the king; my lord, I am ready to do my duty, and I beg of your lordship that you would please to tell me what is my duty; for whatsoever I shall answer, I shall speak the truth in.

Serj. Pemberton. There is nothing desired, but that you would speak the truth.

Blathwayt. My lord, I am easily guided by your lordship what I ought to answer to.

L. C. J. What is it you ask him, brother Pemberton?

Serj. Pemberton. We desire Mr. Blathwayt to tell the whole discourse that passed at the council, when he says my lords the bishops owned this paper.

Sol. Gen. That's a very pretty thing indeed!

L. C. J. Look you, Mr. Blathwayt, you must answer them what they ask you, unless it be an ensnaring question, and that the court will take care of.

Blathwayt. If your lordship please to ask me any question, I shall readily answer it.

L. C. J. You must answer them.

Serj. Pemberton. We ask you upon what occasion they came to own their hands? what discourse was made to them, and what they answered?

Blathwayt. My lord, I beg your lordship's directions.—*L. C. J.* Come, tell it, Sir.

Blathwayt. My lord, the occasion was this: this Paper was read in council, and I had the honour to read it before the king; and it having been read before his grace the arch-

bishop, and my lords the bishops, they were asked, whether they did own that paper? And, my lord, they did own it.

Sir R. Sawyer. Mr. Blathwayt, was that the first time that my lords the bishops came in?

Blathwayt. Sir, I was not asked that question.

L. C. J. What would you have, sir Robert Sawyer?

Sir R. Sawyer. We would have an account what passed at the council?

L. C. J. Would you have all the discourse betwixt the council and my lords the bishops?

Serj. Pemberton. All that relates to their accusation, my lord, their whole confession, and what was said to them.

Att. Gen. Do you think, Mr. Serjeant, that when we call a witness, you are at liberty to examine him to every impertinent thing?

Sol. Gen. My lord, we desire they may only ask reasonable and proper questions.

Serj. Pemberton. Mr. Solicitor, he is sworn to answer, and tell the whole truth, and that's all we ask of him.

Sir R. Sawyer. Sir, I will ask you a plain question upon your oath; did not my lord archbishop, and the rest of my lords the bishops, at first refuse to own it, or to answer whether it were their hands or not?

Sol. Gen. That is not a fair question, sir Robert Sawyer; 'tis a leading question.*

Serj. Pemberton. Then I ask you in short, what did they refuse? I am sure that is a fair question; for God forbid that any should hinder the king's evidence from telling truth.

Sir R. Sawyer. And God forbid that half evidence should condemn any man.

L. C. J. God forbid the truth should be concealed any way.

Serj. Pemberton. Pray, Sir, when they were first asked, whether that was their hands or not, what answer did they give?

Blathwayt. Sir, I have begged the favour of my lords the judges to tell me what I am to answer, and what questions are proper for me to answer to?

L. C. J. You must answer any questions that are not ensnaring questions.

Sir R. Sawyer. Mr. Blathwayt, you are upon your oath to testify the truth.

Blathwayt. Sir, I am not acquainted with the methods of law; I desire my lords the judges would instruct me.

Just. Allybone. Answer to the question that they ask you.

L. C. J. We observe what they ask you; we'll take care that they ask you nothing but what they should.

Blathwayt. I desire the question may be repeated.

Serj. Pemberton. When they were first asked if it were their hands, what answer did they give the king?

Blathwayt. His grace the archbishop and

* See Peake's Law of Evidence, c. 3, s. 6.

my lords the bishops at first did not immediately answer whether the Paper were theirs or no.—*Serj. Pemberton.* What did they say?

Blathwayt. They said, they did humbly hope if they were put to answer, no advantage should be taken against them.

Serj. Pemberton. What did they say farther at that time concerning his majesty's pleasure?

Sol. Gen. That's a leading question, Mr. Serjeant Pemberton; you cannot leave your way of leading witnesses.

Serj. Pemberton. It is a very strange thing; if we ask a question that's general, that's excepted to: if we ask any question in particular, then they find fault with us, that it is a leading question; so that we can never ask a question that will please them. Pray, Mr. Blathwayt, what did they say concerning the king's pleasure, whether they would answer if the king commanded them?

Serj. Trinder. How can it be material what they said?

L. C. J. It is material that it should be asked, and that it should be answered.

Serj. Levinz. You are to tell the whole truth, Sir. Pray tell us what did my lords the bishops say about submitting to the king's pleasure.

Sol. Gen. What is that to the purpose?

Mr. Pollexfen. Mr. Solicitor, his oath is to tell the truth, and the whole truth, and therefore he must answer my question.

Serj. Pemberton. You are mighty loth, Mr. Solicitor, to let us hear the truth: I would not willingly lead him in any thing; and I cannot see that this is any leading question, unless his oath be against law, which says he is to tell the whole truth.

Att. Gen. My lord, I do beg your lordship's favour of a word in this thing. It is certain if they ask any thing that shall take off the evidence that was first given, that it is not true, I cannot oppose it; but if they ask questions only to enflame, and to possess people with foolish notions and strange conceits, that is not to the fact that we are now trying—

Sir R. Sawyer. 'Tis only to have the truth out that we do it.

Serj. Pemberton. There is no body here that will be enflamed, Mr. Attorney; I have asked a fair question, the court has ruled it so.

Blathwayt. I shall readily answer any question that the court thinks fit.

Serj. Pemberton. Sir, by the oath you have taken, you are to tell the whole truth.

L. C. J. Is he to tell you all that was done at the council-board that day?

Serj. Pemberton. No, my lord, only of what passed there about my lords the bishops confession; of the whole of that matter.

Blathwayt. There has been so much said between the asking of the question and this time, that I desire it may be repeated, that I may know what to answer to.

Serj. Pemberton. I ask you in short, Sir, what did my lords the bishops say at the time

of their appearing in council concerning the king's pleasure, whether they should answer or not?

Blathwayt. The first time my lords the bishops came into the council, they were asked the question, whether they did own that paper? They did immediately answer, They humbly hoped, as they stood there as criminals, his majesty would not take the advantage against them; but however they would obey his majesty's command.

Sir R. Sawyer. Were they commanded to withdraw?

Blathwayt. Yes; thereupon they were commanded to withdraw, which they did.

Serj. Pemberton. When they came in again, what questions were asked them?

Blathwayt. They came in several times, more than twice, I have reason to remark this, that they did so: do you mean the second time, Sir?—*Serj. Pemberton.* Yes, Sir.

Blathwayt. The second time they seemed unwilling to own the paper.

Sir R. Sawyer. And what did they do the third time?

Serj. Pemberton. But first let us know what more was done the second time.

Sir George Treby. How was that unwillingness of theirs overcome?

Serj. Pemberton. When they expressed their unwillingness, what did they say farther?

Blathwayt. If I remember right, they said as they did the first time, they humbly hoped his majesty would not take advantage against them.

Serj. Pemberton. Then what did they say the third time?

Sir R. Sawyer. Pray were they asked whether they published it?

Blathwayt. As to the publishing it, it was laid before them, and I think they were asked the question, whether they published it?

Sir R. Sawyer. And what answer did they make?

Blathwayt. I remember his grace, and my lords the bishops, did not own they had published it, but they denied it.

Sir G. Treby. After they discovered their unwillingness the second time, what followed next?

Blathwayt. They did withdraw after the second attendance.

Serj. Levinz. But what was said to them? Was that all that was said to them the second time?

Blathwayt. I have said two things already, that they were unwilling to answer, and that they denied the publishing.

L. C. J. This is a strange usage of a witness, to put him to tell every thing that was said.

Serj. Pemberton. I would ask you this question, Sir, When they came in the second time, whether they did desire to know if it were his majesty's command that they should own it?

L. C. J. That I must not permit you to ask, brother; that is to lead the witness.

Serj. *Pemberton*. My lord, he will not answer general questions; I have asked him all along general questions, and I cannot get an answer from him to them.

Blathwayt. I am ready to answer any questions that the court thinks I should answer; I am not backward to answer according to my duty.

L. C. J. Let one of you ask a question at a time, and not chop in one upon another.

Sol. Gen. In all the trials that ever I have been in, in all the cases of criminals, the king's witnesses used to be treated with respect, and not to be fallen upon in this manner.

L. C. J. He shall be sure to have all respect paid him.

Sol. Gen. He is in office under the king.

Serj. *Pemberton*. I do not think that Mr. *Blathwayt* does believe I would shew him any disrespect more than he would shew me.

Att. Gen. I beg one word, my lord.

L. C. J. Mr. Attorney, what do you say?

Att. Gen. My lord, I say I do oppose the asking of this question, not but that every man has a right to cross-examine a witness, but if they ask such a question, let them tell us what use they would make of it.

L. C. J. Mr. Attorney-General, for that matter—

Serj. *Pemberton*. My lord, if you please, I'll give Mr. Attorney an answer.

L. C. J. Brother *Pemberton*, I was speaking to Mr. Attorney, and pray hear me; I will not ask you what use you'll make of the question you ask; but do you ask fair and regular questions, and I'll take care you shall have an answer to them.

Serj. *Pemberton*. I will deal plainly with the court, and tell you what use we intend to make of our question. If they answered under a promise from his majesty, that it should not be given in evidence against them, I hope they shall not take advantage of it.

Sol. Gen. I say that is a very unmannerly question; but however it shall be answered.

Serj. *Pemberton*. Why so, Mr. Solicitor?

Sol. Gen. My lord, it is to put something upon the king, which I dare hardly name.

L. C. J. We do not know what answer will be made to it yet, but it does look like an odd kind of question.

Sol. Gen. If men will be so pressing, I, for the king, desire the question may be entered.

Sir *R. Sawyer*. What do you mean, Mr. Solicitor?

Sol. Gen. I know very well what I mean, Sir; I desire the question may be recorded in court.

Serj. *Pemberton*. Record what you will; I am not afraid of you, Mr. Solicitor.

Sol. Gen. Are you afraid of the law?

Serj. *Pemberton*. No, nor of you neither.

L. C. J. Pray, be quiet, gentlemen.

Att. Gen. Pray, Mr. *Blathwayt*, answer, whether there was any promise made to my lords the bishops from the king?

Blathwayt. My lord, I take the question to

be, whether the king was pleased to make my lords the bishops any promise of not taking advantage of what answer they made?

Att. Gen. That is the question.

Blathwayt. As that question is stated, there was no such made.

L. C. J. Look you, he tells you there was no such promise made. There is an answer to your question, brother.

Serj. *Levinz*. We made no such question; but the question I would ask is this:—

Sol. Gen. For the satisfaction of the court, repeat what you said just now, Mr. *Blathwayt*.

Blathwayt. I take the question to be, whether the king made any promise to my lords the bishops, that no advantage should be taken of what they said? And I said, the king made no such promise.

Serj. *Pemberton*. We did not ask you the question, but we only told you what use we would have made of another question.

Mr. *Polluxfen*. Mr. *Blathwayt*, I see you can very well distinguish what questions are to be answered. I ask you in short upon your oath, when they were first called in, what was said to them, and what was answered by them?

L. C. J. Here has been a great deal of wrangling, but this is a fair question, and may reduce us to order again. Tell us over again from the beginning, what passed when my noble lords the bishops came in the first, second, and third time, when they were examined about this paper?

Blathwayt. My lord, I shall comply with your lordship's directions. I apprehend I am to answer together concerning the first, second, and third comings of my lords the bishops into the council. The first time, as I said before, the lords the bishops were unwilling to own the paper, and did say, they humbly hoped his majesty would not take advantage against them, but that they were ready to obey his command. The second time they were called in they did repeat it again, that they hoped his majesty would not take advantage against them: after that there was mention made of the paper being published, I remember my lords the bishops said they had not published it.

Sir *R. Sawyer*. Is that all?

Sol. Gen. You have no mind to hear all, I think.

L. C. J. How do you expect to be answered your questions, if you interrupt them? Go on, Mr. *Blathwayt*.

Blathwayt. Sir, I said last, that they having prayed the king that no advantage might be taken against them for what they should say, there was mention made of the paper its being published, and my lords the bishops did say they had not published it; and his grace my lord archbishop said it was written with his own hand, and that he had not made use of his clerk.

Sir *R. Sawyer*. Is that all you can remember that passed at that time?

Blathwayt. This is the substance of what I remember.

L. C. J. Was this the third time?

Blathwayt. No, that was the second time, my lord.

Mr. Pollexfen. If there be not some order in this evidence, my lord, we shall not be able to observe any thing upon it.—Pray what was done afterwards?

Blathwayt. My lord, chancellor, upon their coming in, did require them to answer, whether they did own that paper or not? My lords the bishops did own the paper.

Mr. Pollexfen. Do you remember in what words or expressions, as near as you can, they did own it?

Sol. Gen. Is that a practice to be endured?

Mr. Finch. Why? He may apprehend and take that to be an owning of it, which was not.

Sol. Gen. Has not he sworn the manner of it, and almost the very words?

Serj. Levinz. We desire nothing of him but that he will tell us what words they said when they owned it.

Blathwayt. It was the third time that they came in, that they owned it.

Serj. Pemberton. Why? What did they say?

Blathwayt. My lord chancellor required them to answer, whether they owned the paper or no.

Serj. Pemberton. What did they say then?

Blathwayt. As near as I can remember, his grace and the lords the bishops did own the paper.

Serj. Pemberton. What words did they own it in? Tell the manner of it.

Sol. Gen. What's this to the purpose?

Mr. Finch. Mr. Blathwayt, did you take notes of what passed there?

Blathwayt. I answer, Sir, I did not take notes, for I attended the king at his elbow, and did not take notes. Mr. Finch, you know the manner of the council in such cases very well.

Att. Gen. Then we ask you for the king, because they shall not enflame people by such an expression, in what words did they own it, if you can remember?

Blathwayt. Sir, I have declared my memory as well as I can; when the other clerks come to be examined, if they can tell any more, let them.

Sol. Gen. But we will have no discourse to enflame the world: did the king promise or declare that no advantage should be taken of their confession?

L. C. J. I would ask him that question, What was the manner that my lord chancellor expressed himself in to them, when they came in the third time?

Blathwayt. As soon as my lord chancellor had required them to declare whether they owned that paper; [Holding it forth to the court,] as well as I remember, his grace took the paper in his hand, and it was handed over, or shewed to my lords the bishops, and they owned and declared so, just as if they should lay it before the court, just so. I do not re-

collect myself of all the circumstances that passed; I only can tell you the substance.

Sol. Gen. He does not remember what they said particularly.

Att. Gen. Mr. Solicitor, I know well enough what they mean by the question; I know they would fain possess the world with a belief that there was such a promise made them, and yet they are prosecuted notwithstanding that promise: therefore I do ask you, Mr. Blathwayt, and for the king's honour I must ask it: did the king make any promise or declaration, that no advantage should be taken, or use made of it?

Blathwayt. The king did not make any promise or declaration that no advantage should be taken or use made of it.

Sol. Gen. He only put them upon it, whether they did own it or not?

Att. Gen. I ask you upon your oath, did my lord archbishop own it to be his hand-writing?

Blathwayt. Yes, he did, and said he writ it with his own hand, and would not let his clerk write it.

Att. Gen. Did he own the whole to be his hand writing, or not?

Blathwayt. Yes, he did.

Att. Gen. Did every one of the bishops own their names subscribed to it?

Blathwayt. Yes.

Sol. Gen. Then, my lord, we pray now that it may be read.

L. C. J. I suppose now they will be content it should be read.

Mr. Finch. If your lordship please to favour me one word, I think it cannot yet be read; and my objection is this.

L. C. J. I thought you had made all your objections before, as to the reading of it.

Mr. Finch. Pray, my lord, spare us. Here are two parts of this information; the one is for consulting and conspiring to diminish the king's royal prerogative, and for that end they did make and write a seditious Libel; the other part is, that they did publish this seditious libel. We are hitherto upon the first part, the making and writing of it. Both parts are local; until they have proved the making and writing of it to have been in Middlesex, it is not evidence upon this information.

Sol. Gen. We have proved it written and published in Middlesex.

Serj. Pemberton. The contrivance and writing of a libel is in itself penal, and they may be punished for it, if they be found guilty. Now if they could give an undeniable evidence concerning the publishing of it, that is nothing to this point; but if they should not give such evidence, or any evidence at all of the publication, yet if it be proved that it was written and contrived by them, they would be guilty for so much, if it be a libel; and this we say is local, as well as all the rest: and therefore we insist upon it, that the writing and contriving must as well be proved to be in Middlesex, as the publication, for all is local.

L. C. J. There is no publishing yet proved.

Serj. *Levinz*. It is true, my lord, here is nothing of a publication yet, with your lordship's favour; for their answer to his majesty in council was, that they did not publish it: all that is said yet is, that they owned the paper to be their hands. My lord, does the owning of that, own that it was written in the county of Middlesex? or that it was contrived or made there? No surely, upon this evidence the place is clearly at large. My lord, this might have been done in the county of Surry, or Somerset, or any other county: the information is, that they did consult and contrive to diminish the king's prerogative at Westminster in the county of Middlesex, and there they did write, and cause to be written, this libel, and there they did publish it. Suppose it should be granted that it is proved that this is the archbishop's hand-writing, and these are their names to it, is there any one evidence that any thing of this was done in Middlesex? And, my lord, that is the thing they are to prove.

Mr. *Sommers*.* If your lordship please, all matters of crime are so local, that if it be not proved to be done in the county where it is laid, the party accused is as innocent as if he never had done the thing; and, with submission, it is the very point of the information, that it be proved they are guilty of the fact in the place where it is laid to be done.

L. C. J. This is the same thing over and over again; but I am content to hear you, Mr. *Sommers*, at any time: I have told you my opinion about reading of the Paper already, if you'll have it again you may.

Mr. *Pollexfen*. Pray, good my lord, spare us before it be read.

Just. *Holloway*. Mr. *Pollexfen*, you have not yet had the directions of the court for the reading of it.

Att. Gen. My lord, when this paper is read, which we pray it may be, we will answer their objections, but at present we say they are out of time.

Mr. *Pollexfen*. Good Lord, what a strange thing is this! We object against the reading of it, and you'll answer us after it is read.

Sol. Gen. Certainly, my lord, we have done enough to prove that this is a paper owned by them in the county of Middlesex, and we pray it may be read.

L. C. J. Truly I am of the same mind I was before, that it is too soon to make the objection, and that the Paper ought to be read.

Sol. Gen. We submit to your rule.

Mr. *Pollexfen*. If it be the will of the court, I have nothing to say.

* "I have heard one of the bishops declare, that objection was made among themselves against Mr. *Sommers*, as too young and obscure a man: but old *Pollexfen* insisted upon him, and would not be himself retained without the other: representing him as the man who would take most pains, and go deepest into all that depended on Precedents and Records."

3 Kenn. Compl. Hist. 513, note, c. 2d. Edn.

Just. *Powell*. My lord, the contrivance and publication are both matters of fact, and upon issue joined, the jurors are judges of the fact, as it is laid in the information; but how can they be judges of a matter of fact done in another county? And it must be presumed, in favour of innocence, not to be done in this county, but in another, except they prove it.

Att. Gen. We are not yet ripe for arguing that point.

Sol. Gen. We are speaking only to the court now for the reading of this paper, and the jury are not judges of that, whether the paper ought to be read or no; that is merely a matter of law, and under the direction of the court; and therefore I pray, since it is now in your lordship's judgment, whether that Paper should be read, that you would please to order it to be read.

L. C. J. I can only give you my own opinion, let my brothers give theirs.

Just. *Holloway*. There is nobody against the reading of it, my lord. I suppose my brother *Powell* is not against it's being read.

Just. *Powell*. But they say the king's counsel must make it out first, that the writing of it, and the conspiring about it, was in the county of Middlesex, or there can be no judgment, so much as to read it.

Mr. *Pollexfen*. My lord, if the objection be saved to us, we shall not so much oppose the reading it, only we would not be surprized in point of time.

Just. *Powell*. Nay, if they consent to the reading, we have no reason to hinder it.

L. C. J. Brother, I believe they know well enough what they have to say for their clients; let the paper be read.

Clerk reads. 'The humble Petition of William Archbishop of Canterbury'—

Sir *R. Sawyer*. Read the whole Petition; I pray, my lord, that the whole may be read. Read the top first, Sir, to whom it was directed.

L. C. J. Read the whole.—Clerk reads.

'To the KING's most excellent Majesty.

'The humble Petition of William Archbishop of Canterbury, and of divers of the suffragan Bishops of that Province, now present with him, in behalf of themselves and others of their absent brethren, and of the Clergy of their respective Dioceses,

'Humbly sheweth; That the great aver-
'ness they find in themselves to the distributing
'and publishing in all their churches your
'majesty's late Declaration for Liberty of
'Conscience, proceedeth neither from any
'want of duty and obedience to your majesty
'(our holy mother, the Church of England,
'being both in her principles and in her con-
'stant practice unquestionably loyal; and
'having, to her great honour, been more than
'once publicly acknowledged to be so by your
'gracious majesty), nor yet from any want of
'due tenderness to Dissenters, in relation to

‘whom they are willing to come to such a temper as shall be thought fit, when the matter shall be considered and settled in parliament and convocation; but amongst many other considerations, from this especially, because that Declaration is founded upon such a Dispensing power as hath been often declared illegal in parliament, and particularly in the years 1662, and 1672, and in the beginning of your majesty’s reign; and is a matter of so great moment and consequence to the whole nation, both in church and state, that your Petitioners cannot in prudence, honour or conscience, so far make themselves parties to it, as the distribution of it all over the nation, and the solemn publication of it once and again, even in God’s house, and in the time of his divine service, must amount to, in common and reasonable construction.

‘Your Petitioners therefore most humbly and earnestly beseech your majesty, that you will be graciously pleased not to insist upon their distributing and reading your majesty’s said Declaration:—And your Petitioners (as in duty bound) shall ever pray, &c.’*

Att. Gen. My lord, we shall leave our evidence here, and hear what they can object to it.

Mr. Finch. Have you no farther evidence, Mr. Attorney?

Att. Gen. We leave it here for the present.

Sol. Gen. The gentlemen of the jury desire to see the petition.

L. C. J. Shew it them.

[The Petition was shewn to the Jury.]

Mr. Finch. But will you give no further evidence, Mr. Attorney?

Att. Gen. I tell you, we’ll leave it here, till we see what you say to it.

Mr. Finch. There is nothing that we should say any thing to.

Att. Gen. Make your advantage of it; if it be nothing, we can have nothing.

L. C. J. What say you for the defendants, gentlemen?

Mr. Finch. My lord, in short, we say, that hitherto they have totally failed; for they have not proved any fact done by us in Middlesex, nor have they proved any Publication at all.

* Signed

W. CANT.

THO. BATH & WELLS

W. ASAPH.

THO. PETRIBURGENS.

FRAN. ELY.

JON. BRISTOL.

JO. CICESTR.

On two other copies of the above Petition, one of which is in the archbishop’s hand, are the following subscriptions:

Approbo H. London, May 23, 1688.

May 23, William Norwich.

May 21, 88, Robert Gloucester.

May 26, Seth Sarum.

P. Winchester.

Tho. Exon, May 29, 1688.

See Collectanea Curiosa.

Sir R. Sawyer. They have given no evidence of any thing.

L. C. J. Pray gentlemen, speak one at once, and then we shall understand the better what we hear.

Sir R. Sawyer. My lord, we say they have given no evidence of the conspiring, writing, or publishing in Middlesex: nay, as to the publication, there is none at all proved.

Mr. Finch. Here is no proof of any publication, nor of the writing or making in Middlesex; so that there is no proof at all against my lords the bishops.

L. C. J. You heard what Mr. Blathwayt said; they owned it in Middlesex.

Mr. Finch. That is not a publication sure, or any evidence where it was done.

Serj. Levinz. Suppose, my lord, that I own in Middlesex, that I robbed a man in Yorkshire, will that make me guilty in Middlesex?

Att. Gen. But if you had stole a horse in Yorkshire, and had that horse in Middlesex, and owned it, I doubt it would go hard with you in Middlesex.

Sol. Gen. Mr. Serjeant thinks he has put a very home comparison; but we shall shew how little significant it is by and bye.

Serj. Levinz. My lord, in the first place, we insist upon it, here is no proof in this case at all, as to the doing of any fact at all in the county of Middlesex: In the next place, this information and petition do not agree; for they have brought an information, and set forth, that my lords the bishops, under pretence of a petition, did make a libel, and they have set forth no petition at all; all the petitionary part is omitted. If I will take part of a man’s words, and not the whole, and make a libel of that part, certainly that is very disingenuous and injurious: for that part that I omit may alter the sense of the whole. They here ought to set forth the petition, with the direction to the king, and the prayer at the end, whereby it will appear what the whole is, and what was desired by their petition. But, my lord, to make this matter a little more clear, whatsoever they say of its being my lord archbishop’s hand, we shall prove that if it were so, it could not be done in Middlesex; for we shall prove that my lord of Canterbury hath not been in Middlesex for three or four months before.

Sir R. Sawyer. Pray let the information be read, then you will see the variance.

Att. Gen. There is not the latter part, we acknowledge, in the information.

Sol. Gen. There may be, and is, a *sic continetur*, and there is no objection in that at all.

L. C. J. It is *sic continetur*, and that’s—

Sir R. Sawyer. The truth of it is, this information hath made a very deformed thing of it, has left neither head nor tail; they stile it a petition, but it is without any direction to any body, and without any prayer for any thing; and without those two it cannot be told what it is.

Just. Allynbone. Sir Robert Sawyer, if I mis-

take not, it is said only under pretence of a Petition.

Sir R. Sawyer. There may be more in the Paper than the Information; and if all were in, one part might explain another.

Sol. Gen. So there may be more; and I wonder to hear that objection from sir Robert Sawyer, who has exhibited so many informations for libels upon sentences, parts and pieces taken out of books without connection or reference to the other parts of books and prints.

Recorder. All that we alledge in the information is contained in the paper, and that's enough for our purpose; we are not bound to recite the whole.

L. C. J. Indeed I think it is no material objection at all.

Serj. Pemberton. Truly I think it is very material in this case: here's a Petition that is preferred to his majesty; take the whole petition together, and, say they, it is a reasonable petition; chop off the direction and the prayer, and then here's nothing but the body of a petition, without beginning or ending; or if a man will say any thing concerning the king, and do it by way of petition to himself, that will alter the case mightily from a paper spread about, that should contain only the body of the petition, and nothing else.

Sir R. Sawyer. Pray read that part of the information.

Mr. Pollexfen. If so be there be an information, and that information charges a man with a pretended Petition, and the evidence comes and proves a Petition both top and bottom, that is not the petition in the information: for that lacking the proper parts of a petition, is called a pretended Petition, but that which is proved, is proved a real one.

Serj. Baldock. My lord, there is nothing in this objection, as this record hath it.

Att. Gen. Pray, my lord, give us leave to state it on our side, as they have done on theirs, and it will be the better understood upon the reading: I hope it is not come to that pass that they would have it. Sure these gentlemen have not forgot altogether the practice that has been so frequent in this court: if there be an information for a libel, is there any thing more frequent, than only to recite the material part? Sure they may say, in such a libel is contained so and so, without setting forth the whole book.

Sol. Gen. How many trials have we had here, wherein there has been only a clause taken out of a book? as particularly in the information against Mr. Baxter* and Mr. Johnson's book†, and all by virtue of a *sic continetur*.

Mr. Finch. That comes not up to our objection here.

Just. Powell. Let us hear the record read, and then we can judge of it.

Sir R. Sawyer. We pray, Sir, the information may be read.

Att. Gen. We are here upon all occasions

chopped in upon, and I do not know how they come to take this liberty; I am sure other people had it not in former times, when these gentlemen stood where we do: as soon as ever we offer to speak, presently there are two or three upon us.

L. C. J. Let me hear them, Mr. Attorney, make their objection, and let the record be read, and that will answer that objection.

Att. Gen. My lord, as for that other thing, they come and tell us, we have set forth a petition; we say no such thing; in the information we say, you composed a certain libel *pretensu Petitionis*, in which are contained such and such things; and now I pray let it be read.

Sol. Gen. Pray, my lord, hear me a little first. I take the information as we have laid it, and I believe there are twenty such precedents that I could instance of late days practice; so was the information against Mr. Baxter; so was the information against Mr. Johnson; so was the information against Dr. Eades; and so was the information against sir Samuel Barnardiston and many more. They are all in this form, by a *sic continetur*; so that as for that matter, we are well enough. But here's another thing, say they, you do not set out the petition; we call it a libel, and it is not the name we rely on, says the information, there is such a libel; and calls it so. If it be not a libel, then my lords the bishops are very innocent, and will be found so; and whether it be so or no, is now in judgment before your lordship, and in trial before the jury; but if it be as the information says, then it is not the speaking of ill things in the body of a petition, and then giving it the good title of a petition, and concluding it with a good prayer. 'Tis not, I say, any of these that will sweeten this crime, or will alter or alleviate it; if there be that which is seditious and libellous in the body of the writing, call the paper what you will, and smoothing it with a specious preamble, or conclusion, that will make it any thing less a libel; these things are plain and manifest. There is such a thing done, says the information, *pretensu petitionis*, this was done: do you call it what you will. The information calls these things a libel upon the king and the government: we have proved our case, we have proved there was such a paper under their hands; we have proved it was owned in Middlesex, and then we are in your judgment, whether this be not evidence sufficient to convict the defendants?

L. C. J. But they do make an objection about the writing and contriving of it, that it is not proved to be in Middlesex.

Serj. Trinder. My lord, our information does not go with a continued clause, that they framed a libel, 'ut sequitur in hæc verba,' but we only say, they made a libel '*pretensu petitionis*;' and then we say, 'In quo quidem libello continetur' so and so; we do not tie ourselves up to a particular recital of all that's in the paper.

L. C. J. Read the record.

Clerk. Reads.

Y

* See Vol. 11, p. 495.

† See Vol. 11, p. 1339.

‘Ipsi iidem Willielmus Archiepiscopus Cantuariensis (and the rest) dicto decimo octavo die Maii, Anno Regni Dicti Domini Regis nunc quarto supradicto, vi et armis, &c. apud Westmonasterium prædictum in Comitatu Middlesexiæ prædicto illicite malitiose seditiose et scandalose quoddam falsum fictum perniciosum et seditiosum libellum in scriptis de eodem Domino Rege et Regali Declaratione et ordine prædictis pretensu Petitionis fabricaverunt composuerunt et scripserunt et fabricari componi et scribi causaverunt, et eundem falsum fictum malitiosum perniciosum et seditiosum Libellum per ipsos prædictos Willielmum Archiepiscopum Cantuariensem (and the rest) manibus suis propriis respective subscriptum die anno et loco ultimo mentionatis in præsentia dicti Domini Regis nunc vi et armis, &c. publicaverunt et publicari causarunt; in quo quidem falso ficto malitioso pernicioso et seditioso Libello continetur.’ The humble Petition of, &c.

Serj. *Levinz.* It is quite another thing; that which is produced, from that which is in the information, by this leaving out a part; for here is the prayer omitted, and the direction.

Sol. *Gen.* Then, my lord, I think there is nothing in the case, but this mighty objection of the county; and, says Mr. Serjeant Levinz, if my countryman confesses in this county, that he stole a horse in Yorkshire, you shall not try him in Middlesex, but in Yorkshire, because, by his own confession, the fact is in another county.

Serj. *Levinz.* I did not put the case so.

Sol. *Gen.* But take the fact of the case as it is here: my lords the bishops in Middlesex own this paper; my lord archbishop owns it to be his writing, and the rest of my lords the bishops in Middlesex own their hands: and do not say it was written or signed in any other county. If they had done as Mr. Serjeant’s Yorkshire man did, and said, we own we did this, but it was in the county of York, then it would have been like the case that these gentlemen put; but here we are in a plain case of another nature: my lord archbishop comes here in Middlesex, and owns that he writ the paper, and the other bishops own they signed it, without mentioning where this was done. Now it does lie certainly in their knowledge where this was done, and they should have declared it then; but they have owned it to be their paper, and the signing and writing of it, which is enough for us, to turn the proof this was done by them in another county [upon them] who are actors in it, and best know where it was done.

Mr. *Finch.* I own this to be my paper, therefore I writ it in the county of Middlesex: is that a consequence? I am very glad they are no better at their inferences.

Sol. *Gen.* They have owned the thing in Middlesex, that we insist upon, and they have not owned it with any such qualification that it was done out of the county of Middlesex. If they had said so, or that it was done in another

county, then you must have taken it to be as they said it; then if they do not distinguish the place of the fact, your lordship can only take it to be where they owned it; it will be supposed to be done in that place till they disprove it; for when they owned the fact, it will be supposed, if they do not say or prove where it was done, that it was done where they owned it, because the king can’t tell where it was done; but the evidence comes out of their own mouths, they may give satisfaction where it was done, for they know it; and till that be done, all reasonable supposition is against them, that it was done in the place where they owned it; and this is a case wherein they speak of their own fact. If I publish the writing of another person which is libellous, I am to answer only for the publishing and not for the writing, which is not my own fact; but if these lords publish a libel that they make themselves, it is in their own knowledge, and in their own power to tell where it was done, because the making and publishing is their own act. If my lords had published a paper that was contrived by some of their counsel, it had been some excuse for them, and they must only have answered that publication in the place where it was done; but they are here for writing this they have owned in this county, and therefore it lies upon them to prove it was done elsewhere. There is another objection, my lord, made, that here is no evidence of a publication. My lord, I take it to be a publication in itself for a man to write a libel, to set his name to it and part with it, and it comes into the hands of the king, who is libelled by it, is not this a publication of the libel, and to be supposed by the writer unless the contrary appear? Will saying, I did not publish it, excuse him, when the fact is proved? for can there be a greater evidence of publication in itself than this, when some of the men have written it, others set their hands to it, and all owned their names? What makes the fact in this case? If a deed be denied to be *factum* of such a one, what is the proof of it, but proving the hand and seal of the party without proof of the delivery of the deed, yet hand and seal without delivery doth not make a sufficient deed? Their owning the paper, and setting their hands is a publication in itself in reasonable construction and understanding, and therefore they cannot make any such objection. My lord, if there were occasion, we have authorities to this purpose, and we will give them scope enough if they will argue this matter; and if they have any evidence, we desire to hear what they can say to it.

Att. *Gen.* As for this matter of fact, my lord, if I take it right, they do not controvert the publishing, but, say they, pray make it out where it was written or composed. I confess, this would be a business worth the while, for all persons that act in this manner, and are concerned in making of libels, to understand for their advantage. No man doubts in the matter of treason, but it is local; then put the

case, a man is found in Middlesex with a treasonable paper in his pocket; I do not make a comparison, as if this was such a paper, I hope I am not so understood; but I only put it as a case, and that the law is so, is beyond all controversy; then the man is indicted here in Middlesex, for framing and composing such a treasonable libel, and he comes to be tried, and, says he, pray prove where I made and composed it; for though you found it in my pocket in the county of Middlesex, yet I might do it in the county of York; and, upon my word, this had been a very good defence for Mr. Sidney, who was indicted, convicted, and attainted, for making a treasonable paper which was found in his study; might not he have put the same objection? Might not Mr. Sidney have said (it was great pity he did not understand it) pray prove where I did it, for I did it elsewhere than in this county—

Sol. Gen. He did say it, I remember.

Att. Gen. Truly, my lord, I would not hear any answer given to this, for it would make the king in a very woful case: here is a paper that is found in the county of Middlesex, and this is there owned by you to be written and subscribed by you; pray do you prove it, that it was written elsewhere.

Serj. Pemberton. My lord, we will do it, we will be governed by Mr. Attorney for once.

Serj. Levinz. We will prove that my lord archbishop was not in Middlesex in seven months before; and truly I think Mr. Attorney's case of a paper found about a man, or in his custody, will not come up to our case; for was this paper found about us? Surely that is not pretended.

Serj. Pemberton. Your lordship sees by the very frame of the petition, that this petition, which they call a libel, was made after the king's order concerning reading this declaration. Now we shall prove that my lord archbishop, whose hand-writing they prove this to be, was not out from Lambeth-house in two months before, nor till he was before the council.

Sir R. Sawyer. Which was long after that time when it was made.

Serj. Pemberton. So that this cannot be written in the county of Middlesex.

Call F. Nicholls. [Mr. Nicholls was sworn.]

Sir R. Sawyer. Do you remember the 18th of May last?—*Mr. Nicholls.* Yes, Sir.

Sir R. Sawyer. Pray how was it with my lord archbishop of Canterbury at that time; and before that, did he go abroad?

Mr. Nicholls. My lord, I am very sure that my lord his grace of Canterbury, whom I have served in his bed-chamber these seven years, never stirred out of the gate of Lambeth-house since Michaelmas last.

Sir R. Sawyer. Till when, Mr. Nicholls?

Nicholls. Not till the time he was summoned before the council.

Serj. Pemberton. Now I hope we have given them a full proof that it could not be in Middlesex.

Call Thomas Smith. [Mr. Smith was not examined.]

Mr. Finch. Truly, my lord, I think what we have proved, or what proof we further offer of my lord of Canterbury's not being in Middlesex for so long a time, is *ex abundanti*, and we need it not; for with humble submission in point of law, it is incumbent upon them that are to prove the charge in the information, to prove where it was done; because the locality of it is part of the thing, they ought to prove it. In its nature it is local, there is a place assigned in the information, and unless they prove it was done in the place that they have laid, they have not proved the charge in the information. Now, my lord, they have not made proof of that, and for proof of publication, I think they have offered none to your lordship; they never did call it so yet, and truly I never did hear or know that the owning of their hands at the council-table was a publication of a libel: it is owning the writing, but it is not an owning where the writing was made; but where it was written, and where it was made is of necessity to be proved. Before the charge upon a record, in a court of justice, can be said to be made out, it is a local charge, and in justice, the locality must be proved, or the information fails. My lord, they have offered no proof to it, and they have not yet gone to the second part of the information; for as to the publication of it, there is not a tittle of proof offered, but only the owning of their hands upon their examination at the council, and no man did ever think that the answering a question and owning a paper at the council-table, upon a question put by the king himself, was a publication of a libel.

Serj. Baldock. Pray, my lord, hear me a word to that: though the thing be never so local yet there must be some place where a thing that was done, was done. Then if nothing else appears but what was done in Westminster, in the county of Middlesex, unless they shew the contrary, that must be the very place where it was done.

Sol. Gen. Here is a great deal of prevarication in this matter, and I would observe to your lordship how they do use the court ill in it: pray, my lord, what is it we are upon? We are proving that these seven lords, the bishops, signed this paper; and I think we have proved it sufficiently out of their own mouths: but, say they, it was not signed in the county of Middlesex, but in the county of Surrey. All this is but imagination, and they would have the court to imagine it too: For how do they prove it? They would have your lordship and the jury believe, that it was signed elsewhere, because my lord archbishop has not been out of his house in some months before: It is all but inference, and argument, and imagination. But still, gentlemen, do you answer what I objected to you? Does it not lie in their power to shew where it was signed? Here are six more, besides the archbishop, where was it signed by them? Here are six of the bishops that signed it besides my lord archbishop, it

does not appear where they signed it; but they confess at Whitehall, in Middlesex, that they did set their hands and sign it, and do not say in what place.

Serj. *Levinz.* Ay, they did so, and what then?

Sol. Gen. Ay, and ay too; if they did so, the presumption and common intendment upon such evidence is, that it was done in the place where it was owned; and the rather for that reason that I offered before, that it lies in their knowledge; and therefore it is incumbent upon them to prove, that it was not in the county of Middlesex, else the presumption is against them: so that this objection I take rather to be an invention of the counsel than the truth of the fact, because they that can make this out, do it not. And as to what they say of my lord archbishop, that he has not been out of his doors in Lambeth for so long a time, who can prove such a thing? Certainly my lord was able to come abroad for any thing that appears; he has been here twice, and he was able to come and came to the council-board: but when all is done, my lord archbishop is certainly able to put this matter out of doubt; for he may easily prove it, if the fact was done in Surrey; and that will satisfy the court and every person that hears this cause, that it was signed by him at Lambeth, in Surrey, if he designs to deal sincerely with your lordship and the court, and the jury; but certainly it is not to be proved by a circumstance, such a fallible one as this is, but he ought to give your lordship and the jury satisfaction about this fact: he ought to say, it is true, I did sign it, but it was at Lambeth house; that indeed would be a down-right stroke to this cause: but to go upon a supposition, that because my lord archbishop was not out of his house for so long together, therefore they are all not guilty, is a very hard and foreign inference. My lord, there's another matter that they insist upon; and that is about the publication; that is as plain as any thing can be, that here is a full proof of a publication; for if the paper be libellous, wherever that paper is, that is a publishing; wherever a paper travels, how far soever it goes, it is a publication of it by these persons that signed it. I believe nobody thinks that this should fly into the king's hand, but somebody brought it to him; and certainly, my lord, if your opinion shall be, that this paper is libellous, then wherever it is, it is a publishing, which is an offence; wherever it is found, it is a publication; for there is the mistake of these gentlemen, they fancy, that unless there was a public delivery of this paper abroad, nothing can be a publication; but I rely upon it, they setting their names to it, made it their paper; and wherever it was afterwards found, that did follow the paper wherever it went, and was a publication of it, was in their power, it being their own contrivance; it was made and framed by themselves, and nobody will believe, when it was in their own hands that they put to it, that any body else could have any power over it:

For aught appears no body else was at work about it, and when there were so many learned prelates that had such a paper, no one can believe they would let it go out of their hands, without their own consent or privity, and it could not reasonably go out of their hands but by their consent, privity or direction. Is not this an evidence of the publishing? Do they give your lordships any evidence that they had stifled this paper, or secreted, [secured] it, or kept it in the dark or endeavoured to stifle it? If they had so done, they had said something; but will any body believe all this was done in vain by my lords the seven bishops? Can any body assign a reason why so solemn a thing as this should be done to no end and purpose? Why a paper should be framed that rails at* the king's two declarations? Why a paper that gives reasons why they could not read it in their churches, and signed with such solemnity by all these lords and learned prelates; we submit this to your judgment in point of law; and the law is plain, that if this paper be libellous, and it is found in the county of Middlesex, this is a publication of that libel in the county of Middlesex, *prima facie*. I shall mention to your lordship that case of Williams, which is reported in the second part of Roll's Reports,† fol. 88. Mr. Finch made use of it in the case of Mr. Sidney; it was the great case then relied upon for their purpose, and that guided and governed that case (as I apprehend) from the verdict and judgment that was given in it. This case was in judgment 17 Jacobi.‡

* In sir William Williams's MS. the words 'rails at' are obliterated and 'argues against' substituted.

† Ante, vol. 2, p. 1086. See also Pine's Case, ante, vol. 3, p. 359.

‡ The remainder of this Argument, after many obliterations and interlineations, stands thus in sir W. Williams's MS. copy:

"It seems Williams was a barrister of the Middle Temple, and being a high Romish Catholic he was expelled the House, and being so expelled and a sort of zealot, he wrote two books, the one called Balaam's Ass, the other Speculum Regale, and there he makes use of the prophecy of Daniel where the prophet speaks of time and times, &c. he makes application of it to the present time by a parallel of the then present times to the time described by the prophet, and concludes according to his own particular fancy, that the world was near its end, and he said those ill days were come mentioned in that prophecy, and because of the impurity of prince, priest and people, and other things that happened, they were the worst of days, and therefore the last. When he had writ this book in this rapture, he pretends he did not write these books as proceeding from any malicious or disloyal heart against the king, but it proceeded from his affection to him to astonish him, whereby he might avoid the mischiefs which were like to happen to him, for he concluded most of his prophecies with

It seems Williams was a barrister of the Inner Temple, and it seems, being an high catholic for opinion and judgment, he was expelled the House; and he being so expelled (being a sort of a Virtuoso) wrote a book called Balaam's Ass; and therein he makes use of the prophet Daniel, and he makes application of it according to his own particular fancy. He writes there that this world was near at an end; and he said, those ill days were come that that prophecy spoke of; and because of the impurity of prince, and priest, and people, and other things that happened, those were the worst of days, and therefore the last; and that certainly we had the worst prince that ever was in the world: when he wrote this book, what does he do? He was a little more close than my lords the bishops, and pins it up, or seals it up, and it was brought to the king; and what is this more than the case before your lordship? They indeed say, I do this by way of advice to the king; so said he, I do this by way of advice to the king, for God forbid that any of this should happen to the king; and so what he does, was by way of advice, and he prayed God to avert it from him. Here was as good a prayer as there is in this paper, and there was a good design; he made use of the prophet Daniel, and applied his words. Well, what was done upon it? This was never published; for the question was before the court, whether this sealing of it up, and not delivering it to any other body, were a publication? The court

God avert or God save the king; he was a little more close than my lords the bishops in the manner of conveying these books to the king, by sealing them up in a box and conveying them to the king, and what is this more than the case before your lordship as to the manner of publishing. They indeed say we do this by way of advice to the king, so doth Williams with his God forbid that any of this prophecy should happen to the king, and prayed God would avert it from him. Here was as good a prayer, as there is in this paper, and there was a good design he made use of the prophecy of the prophet Daniel and applied his words; this was never published by him but conveyed secretly sealed in a box to the king: the question was before the court, whether this writing and sealing of it up without delivering it to any other person, then thus secretly conveyed to the king, was publication? The court was of opinion that the very writing of it was a publication by construction of law, they did not regard the delivery of it to the prince, but it was proved he writ it and that made it treason, and so resolved in that case, and that opinion prevailed in Mr. Sidney's case. My lord, we have cases in my lord Hobart of such publication received in criminal matters, sir Baptist Hicks's Case, and my lady Hatton's Case, there was an abusive letter sealed up and secretly delivered to the party abused without any other publication, this sentenced to be a libel and sufficiently published, and so punished."

was of opinion, that the very writing of it was a publication; they did not value the delivery of it to the prince, but it was proved he writ it, and that made it treason. My lord, we have cases enough in my lord Hobart for this matter; sir Baptist Hicks's Case, and my lady Hatton's Case; there was only a letter sealed up and delivered to the party.

L. C. J. You need not trouble yourself about that, Mr. Solicitor.

Sol. Gen. If the case then be thus, I take it, it will turn upon this fact; they have given your lordship no proof where this paper was signed by them: Here are seven persons that had a hand in it, and here is only one person whom they have insisted upon to be infirm, and kept his house for a great while together. We say the publishing follows the libel wherever it goes; the libel is in the county of Middlesex, they have confessed it in the county of Middlesex, and they did not distinguish when it was done. Then if they will not distinguish upon the evidence, no man ought to distinguish, but ought to presume it was done in that place where they owned it, and the law doth so presume.

Att. Gen. I did not apprehend we were got so far, that they opposed us in the publication.

Sir R. Sawyer. Yes, we did, for you have given no evidence of it.

Att. Gen. Surely, my lord, for that we have given a sufficient evidence, and they have given some proof of it, as to my lord archbishop; that because he had not been from Lambeth, therefore he did not publish, nor could cause it to be published; for your lordship sees by this information, they are not only to answer the *Publicavit*, but also the *Publicari causavit*; for do you doubt, gentlemen of the law, in this case, that if I compose a libel in Surrey, for example, and send a person over into Middlesex, I am not guilty of the publishing?

Sir R. Sawyer. That is not your case, Mr. Attorney.

Mr. Finch. That were clear if it were so, but it is not so.

Att. Gen. My lord archbishop's case signifies nothing, if we shew it was published in Middlesex, and you give no evidence to the contrary but it might be there; and I am sure as to the rest of my lords the bishops, there is no evidence at all given. Here is a petition that we say is a libel; they, it may be, will make that a question: This is delivered to the king's own hand in the county of Middlesex, and there are as many cases as any one man can name, that this amounts to a publication by the party; for if I send a letter by the post sealed, that nobody can see but the party himself, and he that writ it, it is adjudged over and over again it is a libel.

Just. Powell. That you need not labour, Mr. Attorney, for that's the case of Williams of Essex; but how do you apply it to the case now before us?

Att. Gen. That's an answer to their objection as to the publication.

Just. *Powell*. But what say you to the first part? You have not proved that it was written in Middlesex.

Att. Gen. There is the case of Barrow and Lewellin in Hobart, and likewise the case of sir Baptist Hicks, which is reported both in Hobart and in Popham; and in Popham, towards the end of the case, there is a remarkable passage. Says that case, if it should not be punishable at the suit of the king, there would be no remedy; for the party cannot bring an action, because he can be no witness for himself, and it is only known betwixt them two; but a witness for the king he may be, to prove his own receipt of the letter, and the party's hand.

Just. *Powell*. You need not labour that point, I'll tell you, Mr. Attorney; for the law is very clear in that point, I think, if you bring it home to your case.

Att. Gen. Then here's the case in short, my lord; that my lords the bishops have caused to be made and written this petition, they are made parties to it by setting their names, and this is a continued act: whatsoever is written there is my lord archbishop's writing, wherever it goes, as I'll put a case that's very well known. If I take away goods from a man in the county of Cumberland, and I am found with them in the county of Middlesex, it is a continued act, and makes all but one felony, and I shall be tried here in Middlesex for it. If a man write a thing in one county, and it is sent and dispersed in another county, that still continues to be his fact, though it may be the first part was not in the same county with the other: but suppose all this while that part should not affect my lord of Canterbury, the causing it to be published does.

Just. *Powell*. Do you think, Mr. Attorney, that writing in one county is such a continued act, that he may be said to write it in another county?

Att. Gen. Sir, I take it, where there is a complicated crime of writing and publishing a libel; and the beginning of it is in one county, and the carrying it on is in another, that is a continued act, and may be tried in either county.

L. C. J. It is all one act of libelling, as they say.

Just. *Holloway*. In cases of felony it is so; taking in one county, and being found with the goods in another, it is felony in either county.

Just. *Powell*. But in that case they are two felonies; for it is robbery in the one county, and but bare felony in the other.

Sol. Gen. Suppose that my lords the bishops signed this paper in another county, and my lord archbishop consents to have it sent into Middlesex, is not this a causing it to be published in another county?

Just. *Powell*. Yes, it may be, if you prove his consent.

Sol. Gen. Then suppose further, which will very well consist with my lord archbishop's

evidence of his not being out of Lambeth in so long a time the rest of the bishops might sign it in Middlesex, or it may be in Lambeth; and then they carry it from Lambeth by my lord archbishop's consent over hither into this county: is not this a causing it to be published in this county? The delivery with his consent certainly is a proof or an evidence of this, for our information goes two ways; for making, contriving, writing, and publishing, that's one way; and then for causing it to be made, contrived and published, that's the other way. And if I prove that he caused it to be published, he may be found guilty as to that part, and not guilty as to the other: for the information is not so entire, but that the king has his choice. If my lord archbishop had not signed it, or written it, but had caused it to be published, he may be found guilty of so much and not guilty of the rest. But if he be guilty of any one of these things, it is enough to have a verdict for so much; though he be guilty of none of the other things laid in the information, yet if he be guilty of causing this paper to be published, that ought to be found for the king, and I conceive his consenting that the rest of the bishops should publish or present this to the king in Middlesex is an evidence that will be enough to maintain this information. Then, my lord, is there any evidence brought against what we have proved, that he did not consent or dissent to this?

Just. *Powell*. But where was this consent of his given, Mr. Solicitor?

Sol. Gen. Pray, good Sir, give me your favour, I think I am in a plain case that this consent was in the place where he wrote and signed this paper, and delivered the paper to be presented.

Serj. Pemberton. So you are truly.

Sol. Gen. Why, good Sir, you ought to make out the locality, if you'll take advantage of it. The presumption, in common and reasonable understanding, is with us.

Serj. Pemberton. That's very well, indeed! This is the first time I ever heard that doctrine.

Sol. Gen. I cannot help that, but certainly the law is plain: we have proved the fact of writing and signing was done by my lords the bishops, and they do not go about to prove that it was done elsewhere than in Middlesex, where we have laid it; for if they did, then the truth would more manifestly appear, their witnesses being cross-examined by us; and then the truth of the matter would appear to the satisfaction of mankind. The archbishop might be at Lambeth, and yet guilty of causing this paper to be published in Middlesex, by his concurrence with what was done in Middlesex by the other lords the bishops: and I say, my lord, this is natural, upon the evidence that has been given, to be supposed, and ought to be believed; because when they were interrogated at the council-board, and confessed the paper to be theirs, they made no such explanation of their confession, as to any place that they signed it at out of Middlesex, of which

they can take any advantage in their defence. Here has been no person produced that proves any thing to be done out of Middlesex; so that still if they be guilty of the fact proved, they must be guilty in Middlesex, for aught yet appearing.

Serj. Baldock. And it does not appear, in this case, but that my lord archbishop might write the same thing in Middlesex, though he was at Lambeth so long as the witness speaks of.

Just. Powell. How do you make out that, brother?

Serj. Baldock. He might do it when he came over to the council.

Sir R. Sawyer. He must do it after it was presented.

Serj. Baldock. Might he not be so long here on this side the water, as to make such a short thing as this, before it was delivered? Half of a quarter of an hour would have done it.

L. C. J. That's a thing not to be presumed, brother, especially since he is proved not to have been in Middlesex so long together.

Sir R. Sawyer. Mr. Serjeant is mightily mistaken, for it is not pretended, that it was delivered at the time when the archbishop, and my lords the bishops, were before the council.

Recorder. (Sir Bartholomew Shower.) Either the making and contriving, or the publishing of this libel will do upon this information; for they shall be taken to be one continued complicated act, and then the party may be tried in either of the counties, as the king will; as in the case of treason, it has been over and over again adjudged, that if a man does one act of treason in one county, and afterwards goes into another county, and does another act of treason, the jury of either of the counties may enquire of the fact done in the other. If they then should take those two as several acts, they were several offences, and they may be found guilty of the one and acquitted of the other; but if they are taken as one continued act, they are but one offence, and the jury of either county may try it. If then, in this case, the jury of this county may take notice of the publication which was here, as certainly they may, if they will agree, as the law certainly is, that the writing of a letter will be a sufficient publication, if the matter be libellous. And there are multitudes of precedents for that; and that the bare setting of a man's hand has been adjudged to be a publication: then give me leave, my lord, to bring it to a similar case: suppose a man write a scandalous letter from London, to a judge or magistrate in Exeter, and sends it by the post, and the letter is received from the post at Exeter, and there opened; would any man make a question whether the gentleman that sent the letter may not be indicted and prosecuted for a libel at Exeter, where the libel was received?

Just. Powell. There's no question of that, Mr. Recorder; that comes not home to the fact in our case: undoubtedly in the case that

you put, the law is as you said, but it is far different from this case.

L. C. J. There's nobody opposes the publication, but the framing of it, where it was made.

Recorder. Supposing then the party were at Exeter, and he were interrogated before the magistrate, whether it were his hand or no, and he should own it to be his hand, can any body doubt whether his owning that to be his hand, would be a sufficient evidence to prove a publication?

Just. Powell. But is that any evidence where it was written? Or if it be not proved that it was received at Exeter, would that be a proof of a publication at Exeter?

L. C. J. They do not deny the publication.

Sir R. Sawyer. We do deny that there was any publication; and they have proved no place where it was made.

Sol. Gen. My lord, we are not for turning my lords the bishops out of the way of proof that is usual in such cases; let them take it if they will, that this was contrived and made in Surry. Can they publish it in Middlesex, without committing an offence; and is not that offence sufficiently charged in this information? that is it we stand upon: we are not for laying a greater load upon my lords the bishops than our proof will bear.

Sir R. Sawyer. We thank you for your compliment, Mr. Solicitor.

Sol. Gen. Is this a fair way, gentlemen, of interrupting us when we are speaking? Durst any one have served you so when you were in the king's service? We would do our duty for the king, and yet make it as easy as we can to my lords the bishops, and it may be easier than other men would have made it, in our places. But, my lord, let it be a doubtful case, that we cannot tell in which county this was made and contrived, if it were made and contrived in another county than Middlesex, yet when they brought it into Middlesex, there was a publication in Middlesex; and if my lord of Canterbury consented to it, he is also guilty in Middlesex for so much, for causing it to be published: how can any body ever get him off from that causing of it to be published? Here is a paper that must be supposed to be my lord archbishop's paper: now all the world must look upon it to be an imposture put upon my lords the bishops, or a real paper made by them. If it were an imposture and an affront put upon my lords the bishops, they ought to make it out for their own vindication, and to prove themselves innocent: if they do that, they do well, and they ought to have satisfaction made them by those that have so highly injured them; and the king cannot be better pleased, I am sure, than to find them so: but if men will look one way and act another, they must expect to be dealt with accordingly. Will any man that has heard this evidence, and sees that these gentlemen will not go the right way to work to prove their own innocence, believe them to be not guilty? 'Tis plain they

contrived it and signed it; for can any one imagine that they set their hands to a paper that was not formed and contrived by themselves? Then let it go, that this was done in another county, and we cannot punish the writing of it in this county; yet still they are guilty of causing it to be published in this county, and for that we may punish them here: we will be content with having that found that we have proved, which certainly is an offence.

Sir R. Sawyer. We oppose that, Sir.

Sol. Gen. You oppose it! We know you'll oppose common sense; we don't speak to you, we speak to the court. We are content with what is plain, and do not desire to insist upon any strained construction: we say this is natural evidence for us; if this thing be a libel, as we conceive it is, then the causing it to be published is an offence. The publication, we say, was here in Middlesex, and of that there is clear evidence, because it was found and owned here in Middlesex by the defendants here, and came to the king's hand, to whom it was directed; and it could not come out of their hands who signed it, without their knowledge; it was their own child, the issue of their own brain, and it could not in reasonable speaking come to the king's hands out of their custody, without their consent. This, we say, is a clear evidence of a causing it to be published, let the rest go as it will, because we will take the easiest part of the case, and not go upon strains in a case of this nature and expectation.

Serj. Trinder. The greatest question is, I think, now come to the publishing—

L. C. J. The court is of opinion, that its coming to the king is a publishing.

Just. Powell. Ay, my lord, if it be proved to be done by them.

Serj. Pemberton. Before the court deliver their opinion, we desire to be heard.

L. C. J. Brother, you shall be heard in good time, but let them make an end on the other side, and when the king's counsel have done, we'll hear you.

Serj. Trinder. My lord, upon the question of publishing, it has been insisted upon, and the court seems to be very much of the same opinion, that the writing of it is a publishing: that it is without controversy, if the writing of it fell out to be in Middlesex, where the information is laid; but that they would not have to be so by argument, because the archbishop had kept in at Lambeth so long. But, suppose that it were so as they would have it, that is only as to the archbishop, he being the writer of it; but yet, notwithstanding that, the other six might subscribe it in Middlesex, taking it, that there is such a face in their argument as they would have it.

Sol. Gen. We will lay no greater load on the other six than we do upon my lord archbishop, and we say, they are all guilty of the publication in Middlesex.

Serj. Trinder. Pray, Sir, spare me. This paper was in the archbishop's custody and

power, he taking of it himself; and regularly it could not have come out of his custody, in common supposition, but it must come with his consent. It was afterwards in the power of the other six, they had it to subscribe; whereas the subscription was *non constat*; they, it may be, can prove it themselves, but I will only deduce this argument; That if it after comes into Middlesex, it must be taken by presumption to be subscribed by them there, and published; it must be taken by presumption so to be.

L. C. J. No, brother, we ought not to do any thing by presumption here.

Just. Powell. No, no, by no means, we must not go upon presumptions but proofs.

L. C. J. I will not presume it to be made in Middlesex.

Serj. Trinder. But it is proved to be published in Middlesex.

Sir R. Sawyer. My lord, with submission, there is no evidence of the publication.

Att. Gen. That the court is to judge of.

Sir R. Sawyer. Pray, good my lord, what instance of a publication have they given?

Sol. Gen. The court has heard the evidence, we leave it there.

Sir R. Sawyer. Was it their owning and acknowledging it was their hands, when the king asked them the question at the council-table? Surely the king's counsel won't pretend that was a publication, when it was done at the king's command! It was certainly the king that published it then, and not my lords the bishops.

Att. Gen. Well said.

Sir R. Sawyer. Don't you remember that, when Mr. Blathwayt said the king gave it to be read, and it was shewed to the bishops?

L. C. J. I remember what evidence Mr. Blathwayt gave of the passages at the council-board very well, and I know what Mr. Attorney did press about the king's promising to take no advantage.

Att. Gen. My lord, Mr. Attorney is on the other side, he did not press it.

L. C. J. Sir Robert Sawyer, I mean; I beg both your pardons, gentlemen, I think I have done injury to you both.

Sir R. Sawyer. My lord, we say there is no evidence at all, that ever this was sent to the king by the archbishop, or any of my lords the bishops: and as for the cases that they have put, they might have put five hundred cases, and all nothing to the purpose.

Sol. Gen. So they might, and done just as others had done before them.

Sir R. Sawyer. And so are these; for here is the question, We are in a case where the publication is that which makes it a crime: now I would have them, if they can, put me any such case, and then apply it to this. In Williams's case, the question is quite otherwise, and so in any case of treason it must be: wherever there is an overt-act proved, it is the treasonable intention, and the ill mind of the traitor, that is the crime; and the treason (the

overt-act) is only to be the evidence of it. In that case of Williams, with submission, my lord, the publication was not at all necessary, but the very secretest act that could be done by him (if it were an act) is an evidence of the mind; and so the sending of the book to the king himself, though nobody else did see it, was an evidence of the crime of treason, yet it could not be called a publication. But in the other case of sir Baptist Hicks, which was in the Star-Chamber, about sending a letter of challenge, it was plainly resolved that it was no publication of the letter, and that was not the ground of the judgment given against him there, that it was the publication of a libel, but the very fact was a particular offence: for, said the court there, if you will send a letter to a private man, and that is a letter that will provoke him to break the peace, that is an offence punishable in the Star-Chamber; but that is not the reason which is alledged, because no action will lie for want of proof, but quite the contrary; because they may produce the porter or party that brought it, and prove it that it came from this man's hands; and I do not question but that in the King's-Bench at this day, if a man will write a letter privately, to provoke another man to fight, there will lie an information, but not for a libel; for there it will be necessary for to make an offence, that there may be a publication; for that is the very form of the crime, and upon that ground were all those judgments against libels in the Star-Chamber. My lord, I agree to write a letter to the king of another person, or to make a petition to the king concerning another person, as of my lord chancellor, or the judges, or the like, to complain to the king of them scandalously, with a provoking and reviling language, that is a publication; and so if I write a letter to one man of another; if there be scandal in a letter, that is a publication of a libel; and that is the difference that has been always taken, where it is essential to make it a libel, that there be a publication, such a publication must be proved; and the delivery of a letter to a man that concerns himself, is no publication; but in this case they have not so much as proved that it was delivered to the king.

Serj. Pemberton. My lord, with your lordship's leave, I take it, that they have given no manner of evidence of a publication; to say, the writing and subscribing of their names to a paper, is a publication of that paper, is such a doctrine truly as I never heard before. Supposing this paper had lain in my study, subscribed by me, but never went further; would this have been a publication? They never said any such thing. As to Algernon Sidney's case, there was no colour for it, that it should be a publication; but it was an overt-act of treason to compose such a book. They have proved by our confession here, that we have subscribed this paper; they would take it now, that therefore it must be presumed we sent this to the king, and so surmise us into an information for

making and publishing a libel, which we sent to the king; but they do not prove it all. My lord, there are a thousand ways that it might come into Middlesex, and perhaps come to the king's hands too, without our knowledge of delivery; and sure you will not presume these noble persons, without evidence, to be guilty of such an offence as this is suggested to be? So that, my lord, and gentlemen of the jury, 'tis impossible for you to find this a publication in Middlesex; and for the other thing (the writing this paper) they that would make it an offence, must prove where it was done.

Serj. Levinz. My lord, the answer that I shall give to what has been said on the other side, is very short; the cases that have been cited are all law, but not one tittle to this purpose. In sir Baptist Hick's case, and Williams's case, it was proved they all sent them to the places whither they were directed; but is there a tittle of proof that these bishops sent it here? In all those cases they must send it either by a porter or a carrier, and they send it as their own act; and when it comes there, by their sending, that is sufficient proof of their act in the place whither it is sent: and for Sidney's case, there was treason in the very libel and book that he made; and he was not indicted for publishing, but for treason, in the place where it was found, because it was found in his possession: but was this ever in my lord archbishop's possession in Middlesex, or the rest of the bishops, and were they publishing of it? If it had, then it had been their act clearly: but that is the thing wherein they are defective, that they do not prove that my lords the bishops sent or brought it here; but upon the question asked them by the king, they acknowledged it to be their hands: so that, my lord, there is no proof of any fact done here, but an acknowledgment of a fact done, nobody knows where, upon the king's question here in Middlesex: is that any proof of this information?

Mr. Finch. Pray, my lord, spare me a word on the same side; let us see what the evidence is. The evidence is this, That the king brought the paper to the council-table, and the bishops owned their hands to it: this is the effect of the evidence, and all that is to prove the forming and making a libel in Middlesex, and the publication of that libel. And what is therefore inferred from thence? Why, having proved that the king brought the paper to the council-table, and the bishops owned their hands; therefore, first, the bishops made this libel in Middlesex. Secondly, they brought it to the council-table, and published it at the council-table, or else there is no proof at all: for here is nothing of evidence given of any fact, but because they acknowledged it, therefore they made it, therefore they gave it to the king in Middlesex: this were good evidence if they had had the help of a supposition to make it good; but they want that, nor must any such thing be admitted; but I think they are such gross, false consequences, that I doubt not you'll be of opinion, here's no proof of a publi-

cation in Middlesex, and then there is no proof at all against my lords the bishops.

Mr. Pollexfen. I must confess, I hear them say, two acts prove a publication in this case; the one is, the writing of the libel, and the subscribing. If so, then I think, upon the evidence that has been given, the court must needs be satisfied, that the writing of it was in Surrey: The next is their owning their hands: for there is no act done that appears or any evidence against them of any act done from the time of the writing, to the time that they were asked, is this your hand? Surely no man would ever think this to be a publication, where one is asked by authority, whether such a paper be his hand, and he acknowledges it in answer to that question! To turn this to be a crime, I think it can never be done, nor never was before. Then there is nothing in the case, that they can hold to for evidence, and proof against my lords the bishops, but the writing; and that is apparent to have been in Surrey, or otherwise they must hold that the answer to the king's question, This is my hand, is a publication. But truly, my lord, I think neither of these will do: but, my lord, to me this is a great evidence in itself against the proof of a publication, the care and wariness that has been used, that there should be nothing at all of this matter known, from the time that it was written, to the time that they came to be examined and summoned to appear as offenders. My lord, the nature of libels is to publish and proclaim scandal and defamation, or else it loses its end, and consequently its name. This as it stands upon their evidence, is a monstrous proof for my lords the bishops, against the king's counsel; for it seems 'tis a very private matter, so cautiously and warily carried, that there is not any evidence of the fact, but only the names of the persons that writ it, till they come to be examined by the greatest authority, Is this your hand? And then they own it so to be. How can this be taken to be a publication? And it will be a thing of wonderful consequence, if an answer to a question put by authority, should amount to a crime, as it would in this case: that would be, as if authority, that should be employed to do right, would be turned to do the greatest wrong; for it is the duty of all men to answer when examined by a lawful authority, and it would never be offered at, sure, in any other case. If a man comes before a magistrate, and confesses any thing, that indeed is evidence, but is not a crime; for there is a great deal of difference between evidence and the crime; but that this should be both an evidence and a crime too, is, I think, a very strange construction; and for the other part (the writing of it) I suppose the court is satisfied that it was in another county.

Sir George Treby. I desire your lordship to spare me a word, which I think has not been observed by the counsel that have spoke before. The question that remains, is, Whether my lords the bishops did publish this paper? This is a matter of fact that lies upon the prosecutors

to prove. Now I think they are so far from being proved that the bishops did publish it, that, on the contrary, they have proved that their lordships did not publish it. The evidence they have offered for this matter is a confession. This confession is testified by Mr. Blathwayt, and he says the bishops were asked at the council whether they did subscribe and publish this paper, and that their answer was, that they did subscribe, but not publish it. Now a confession must be taken together, and must be admitted to be entirely true by them that produce it; they shall never be allowed to take out and use one piece, and wave the rest. Why then by this evidence of confession, taken as it ought, it appears that the bishops, though they did subscribe, did not publish the paper: so that, I say, the king's counsel have hereby plainly proved, that the bishops did not publish this paper, and yet this is the only evidence upon which they would infer that they did publish it.

Att. Gen. Look you, it does lie upon you, gentlemen, to prove it was done elsewhere than in Middlesex.

Mr. Finch. Sure Mr. Attorney is in jest!

Att. Gen. No, I am in good earnest; all the proof that we have given has been in Middlesex, and you can best tell whether you did it in Middlesex or no.

Mr. Finch. My lord, we have done as to this objection; for we say they have not proved their case.

L. C. J. Mr. Finch, you may observe (and I am sure you do observe as well as any body in all cases), but I say, you may observe that they are off of every thing but causing it to be published; now that does lie upon the king's counsel to prove, that my lords the bishops did cause it to be published; for their owning their hands does not amount to publication.

Serj. Pemberton. My lord, we are upon this point with them, whether here be any evidence of a publication at all?

Just. Powell. Pray let us clear this first; for if there be no publication, there can be no causing of it to be published.

Att. Gen. My lord, if you think fit, we shall go on, and reserve this point till afterwards.

Sol. Gen. They may make objections, if they think fit.

L. C. J. So they may, and they say if these objections are with us, we need go no farther.

Serj. Pemberton. But, my lord, if they be not with us, we have a reserve to give a farther answer to it, and to offer evidence against the evidence they have offered.

Sol. Gen. With all our hearts, give in evidence what you can.

Att. Gen. Then pray, my lord, let us go on to answer this objection.

L. C. J. Pray do, Mr. Attorney.

Att. Gen. My lord and gentlemen of the jury, I would first observe how far we have gone. That there was such a paper written is clear beyond all question, and written by my

lord archbishop of Canterbury, and that it was signed by the rest of the bishops, but not in the county of Middlesex, and that this paper was published, is agreed on all hands.

Just. Hol. No, they do not agree to that.

Att. Gen. Do I say it was published by them? But there was such a paper published.

Serj. Pemberton. No, we say it was never published at all.

L. C. J. Pray, brother Pemberton, be quiet; if Mr. Attorney in opening does say any thing that he ought not to say, I will correct him, as I would do any body that does not open things right as they are proved; but pray don't you that are at the bar interrupt one another, it is unbecoming men of your profession to be chopping in and snapping at one another.—Go on, Mr. Attorney.

Att. Gen. I say, that the paper is proved to be written and signed by my lords the bishops; that I take for granted; and that the paper so signed and written is now published to the world, is also evident; but the question is, Who it was done by, or who caused it to be done? We are reduced to that question. Now, first, it is agreed on all hands, that if I send a letter to a private man containing scandalous things in it, though there is no proof more, but that it was sent sealed, and received by the party; in that case it was a fault punishable in the Star-Chamber, as a crime: but now that this was received by the king, and written by them, there is no room for doubt; for you hear it was produced by the king at the council board, and they asked upon it, If it were their hands? That the king did receive it, there is no room for question, or that they did write it; but the question is, from whom the king had it? I am sure they must shew that somebody else did it; and unless they do shew that, I hope there is no manner of question but it came from them, and they did it; though no man living knew any thing of this matter, but whom they thought fit to communicate it to; yet still they putting the king upon the necessity of shewing this power, in order to his obtaining satisfaction for it, or else he must remain under the indignity without reparation, it ought to be put upon them to clear the fact; for if he does not produce it, then must the king put up the highest injury and affront that perhaps a man can give the king to his face, by delivering a libel into his own hands; and if he does produce it, then say they, That is not our publication. We prove it to be your writing and signing, and we prove it to come from the hand of the king against whom it was composed; for we say it is a libel against his majesty, his government and prerogative: if then all those cases that have been cited be law, then sure there never was a stronger case in the world than this; and I hope the law goes a little farther in the case of the king, than it does in the case of a private man. No man must think by policy to give private wounds to the government, and disparage the administration of it, and then, when he is called in question about

it, says he, Pray prove that I published it, or else you shall not punish me for it. We prove you framed it, and writ it, and signed it, and we prove it came to the king's hand, of whom it was composed. Must we produce two witnesses of the delivery of it to the king? Surely there will be no need of any thing of that.

Sol. Gen. My lord, we have reduced it now to a very narrow question; for, as Mr. Attorney has said, my lord, there is no doubt but that my lords the bishops are the authors of this paper; there is no doubt but they signed it, and there is no doubt but that their signing of it, though it were at Lambeth, as they say, is a publishing of it: but, however, this is plain and manifest, that this paper was published; and that this was published in Middlesex, this is as plain too: now then there is nothing left but this question, whether my lords the bishops, who formed the paper, who wrote the paper, who signed the paper, were not the occasion or the cause of its publication, or privy or consenting to it in the county of Middlesex. My lord, I will reduce it to a very plain point; for we are upon a rational question, before a rational court, and a rational jury, whether these lords did all of them, in the county of Surry, consent to the publishing of this paper in Middlesex? For it is published in Middlesex (that we see); and if they are guilty of consenting to its being published in Middlesex, then they are guilty of that part of the information of causing it to be published in the county of Middlesex, now what do they say to it? Say they, it is agreed, that it is published in Middlesex, but it is not proved to be published by us.

L. C. J. No, they do not say so; they agree it was in Middlesex, but not published.

Just. Powell. Mr. Solicitor, they do agree it was in Middlesex, but not published to be sure, nor by them.

L. C. J. Mr. Solicitor, I'll tell you what they stand upon; they say you ought to prove it to be delivered to the king by the bishops, or somebody employed by them; for upon that went the resolution that was in Williams's case that he sent it to the king; but here is nobody that proves that it was delivered to the king in this case, so that how it came to the king *non constat*.

Sol. Gen. There will be the question between us, whether this be not a publication in Middlesex upon all that is said by us without repetition of things over and over.

Sir R. Sawyer. Pray, Mr. Solicitor, prove your case before you argue it.

L. C. J. First settle what the case is, before you argue it.

Sol. Gen. My lord, I'll put you the case. Here does appear in Middlesex a paper that is a libel in itself, and this libel is proved to be written and formed by these persons; this libel coming into Middlesex, the question is, whether they are privy to it? I say in point of presumption it must come from them.

L. C. J. I cannot suppose it; I cannot presume any thing.

Sol. Gen. My lord, I speak of that which is a common presumption, a natural presumption, what we commonly call a violent presumption, which is a legal presumption, and has always been allowed for evidence.* Now whether there be not such a presumption, in our case, as to induce your lordship and the jury to believe that it cannot be otherwise; or at least to put the labour upon them, to shew how it came out of their studies, and how it came to the king's hands; for it is in their power to shew the truth of this matter, how it was; if they do not, the presumption will lie upon them. That the paper came to the king, that is plain enough; and its coming to the king's hands, is a plain proof of a publication in Middlesex; and who should bring it to the king, but these persons in whose power it was? There is no man undertakes to say, he lost it, then what else is to be believed, but that it came from them? I speak of common supposition and belief; they may very well shew it, if it were not so. All that we can say in it is, here is a paper in Middlesex, this you agreed was once your paper and in your power, pray shew what became of it, or how came it out of your hands or power, it lies upon you to clear this doubt.

Recorder. My lord, there is but this question in the case; the question is not, whether the owning it be a publication, but whether here be any evidence that they did deliver it to favour, I would ask my lord president a question the king, now if they did deliver it to the king, that will be agreed to me to be a publication.

Just. Holloway. No doubt of it, if you can prove it.

Recorder. Pray, Sir, spare me: That they did it, you have this evidence: first, that they were the authors of this paper by their own confession, that this was in the county of Middlesex, and that when they were asked concerning it, they owned it to be their handwriting. Now whether you can in the least question, after all this, their delivering of it to the king, or that it came to the king's hands without their knowledge or consent, is that which lies before your lordship for your judgment.

L. C. J. I will ask my brothers their opinion; but I must deal truly with you, I think it is not evidence against my lords the bishops.

Just. Holloway. Truly I think you have failed in your information; you have not proved any thing against my lords the bishops in the county of Middlesex, and therefore the jury must find them not guilty.

Att. Gen. I'll put you but one case, my lord: a man has an opportunity secretly to deliver a libel into the king's hands, when nobody is by, and so there can be no proof of the delivery.

Just. Powell. It is a dangerous thing, Mr.

Attorney, on the other side, to convict people of crimes without proof.

Att. Gen. But shall a man be permitted thus to affront the king, and there be no way to punish it?

L. C. J. Yes, there will sure, but it will be a very strange thing if we should go and presume that these lords did it, when there is no sort of evidence of it; it is that which I do assure you I cannot do: we must proceed according to evidence, and forms and methods of law; they may think what they will of me, but I always declare my mind according to my conscience.

Serj. Trinder. But as to that other point, whether their owning of it be a publication, has not been particularly spoke to.

L. C. J. Mr. Attorney, and Mr. Solicitor, if there were enough to raise doubt in the court, so as to leave it to the jury, I would sum up the evidence.

Sol. Gen. My lord, we know it is with the court, my lords the bishops insisted upon it, that it was a great while in their hands; but it seems as far as our evidence has gone hitherto, their confession went no farther than that it was their paper, and we must not extend their confession further than it was; but I think we shall offer a fair evidence that they did deliver it in the county of Middlesex.

L. C. J. Indeed, indeed, you ought to have gone to this, Mr. Solicitor, before the court gave their opinions.

Sol. Gen. Pray call Mr. Blathwayt again. [Mr. Blathwayt called.]

L. C. J. Mr. Solicitor, unless you are sure that Mr. Blathwayt is a witness to the publication, it is but spending the court's time to no purpose to call him.

Sol. Gen. We are sure of nothing, my lord; but we must make use of our witnesses, according to our instructions in our briefs. [Then Mr. Blathwayt appeared.]

Att. Gen. Mr. Blathwayt, you were sworn before?—*Blathwayt.* Yes, Sir.

Att. Gen. You were present when this Paper or Petition was delivered by the king, at the council-board?

Blathwayt. Yes, I was so, Sir.

Att. Gen. Do you remember any thing of the bishops acknowledging their delivery of it to the king?

Sol. Gen. Mr. Blathwayt, I would ask you, was there any mention in discourse with my lords the bishops, how that paper came into the king's hands? Was there any mention of what it was done for, upon the account of religion, or how?

Blathwayt. I don't remember any thing of that, Mr. Solicitor [at which there was a great laughter.]

L. C. J. Pray let us have no laughing, it is not decent; can't all this be done quietly without noise? Pray, Mr. Blathwayt, let me ask you, do you remember there was any discourse how that writing came into the king's hands?

Blathwayt. I received it from the king's

* See Lord C. J. De Gray's Argument in Dom. Proc.

hands, and I know it was presented to him by my lords the bishops.

L. C. J. How do you know it was presented to the king?

Blathwayt. I heard the king say so several times.

Sol. Gen. Pray mind my question, Sir: First, I ask you who produced the paper at the council-table?—*Blathwayt.* The king.

Sol. Gen. What said the bishops when that Paper was shewed them?

Blathwayt. Then, as I remember, they were asked, whether that was the Paper that they delivered to the king?

Sol. Gen. Then what said the bishops?

Blathwayt. They at first scrupled to answer, and they said it might be made use of to their prejudice if they owned it.

Att. Gen. Pray, Mr. Blathwayt, consider again; was that the question put to my lords the bishops, whether that was the Paper that was presented by them to the king?

Blathwayt. I do think, to the best of my remembrance, that my lord chancellor did ask them to that purpose, I cannot speak to the very words.

Sol. Gen. And upon this, what answer did they make?

Blathwayt. My lords the bishops scrupled to answer the first and second time, as I told you before, but they did own it was the Petition that they presented to the king, to the best of my remembrance.

Sol. Gen. Did my lord archbishop do or say any thing to own it?

Blathwayt. Yes, both my lord archbishop of Canterbury and the rest of the bishops did own all the same thing.

Sol. Gen. Was this done at Whitehall?

Blathwayt. Yes, at the council-table.

L. C. J. Pray recollect yourself, and consider what you say: did they own that that was the paper they delivered to the king?

Serj. Pemberton. Pray, my lord, give us leave to ask a question to clear this matter; was the question put to them, whether it was the paper that they delivered; or whether it were their hands that were to it?

Blathwayt. My lord, I do not exactly recollect the words.

L. C. J. But pray tell us, if you can, what the question was?

Blathwayt. My lord, I do not remember the very words; but I think if Mr. Serjeant Pemberton be pleased to repeat his question, I shall give him a satisfactory answer, as well as I can.

Serj. Pemberton. Sir, that which I ask you is this, whether the question that was put to my lords the bishops at that time was, Whether this was the paper that they delivered to the king, or whether those were their hands that were to it?

Blathwayt. My lord, I did always think that it was a plain case, that that was the paper that they delivered to the king; and my lords the bishops did never deny but that they

gave it to the king, and I had it from the king's hands.

L. C. J. But we must know from you (if you can tell us) what the question was that was put to my lords the bishops; were they asked, Whether those were their hands that were to that paper? or was it, Whether they delivered that paper to the king?

Blathwayt. As to the first part, that they owned 'twas their hands, that I am sure of; but as to the other, I do not remember what the words were.

[At which there was a great shout.]

Att. Gen. Pray, Mr. Blathwayt, recollect yourself, you say the king produced it.

Blathwayt. Yes, Sir.

Att. Gen. Do you remember that the king asked them any question upon the producing of it?

Blathwayt. My lord chancellor asked them, if those were not their hands to the petition?

Sol. Gen. Was there any other matter in discourse, whether that was the paper that was delivered by them to the king?

Blathwayt. I cannot so positively say what were the words that my lord chancellor used.

Serj. Levinz. Pray do not twist a man so, Mr. Solicitor.

Sol. Gen. And you are not to untwist a man neither, Mr. Serjeant.

Att. Gen. Do you remember that the king said any thing of the paper being delivered to him?

Blathwayt. The king has said it several times; I believe I have heard him say it ten times at least.

Att. Gen. Did he say it at that time?

Blathwayt. I cannot positively say that he did, Sir.

Serj. Pemberton. He cannot answer it; why will you press it?

Blathwayt. My lord, here is the clerk of the council that was then in waiting, he took minutes, and perhaps can remember more than I.

Sol. Gen. Here they cry he cannot answer it, as if they could tell what he can answer better than himself. Pray, Mr. Bridgman, was there any question to this purpose, either from my lord chancellor, or from the king, whether that was the paper that was presented by my lords the bishops, or delivered to the king? For I see you are very nice as to words, and you do very well; but was there not a question to that purpose?

Bridgman. Sir, I do not remember; for I speak to the best of my remembrance in all this matter. I say, I do not remember that that question was asked in those very words, but I do remember something was said to that purpose, but by whom I cannot particularly say.

Sir R. Sawyer. To what purpose?

Sol. Gen. It is very strange that they won't let the witness speak, but are continually interrupting him.

Sir R. Sawyer. Mr. Solicitor, nobody interrupts him.

L. C. J. Why, do not I behave myself between you all as I ought to do? Pray, sir Robert Sawyer sit down, you cannot be contented when the man does you no harm.

Sol. Gen. Pray consider, did my lords the bishops say any thing, or was there any discourse concerning the paper, whether it was delivered to the king or no?

Bridgman. Mr. Solicitor, I have told you as near as I can what I do remember. I know not by whom it was said, but that question, or to that purpose, was asked, whether that was the petition they delivered? but I do not remember whether the question was directly asked, or answered; there was something about it, and several passages there were; but whether spoken by my lord chancellor, or who, I cannot remember.

Sol. Gen. You say there was that which sufficiently denoted a question to that purpose, and they said nothing against it.

Bridgman. No, there was no denial of it.

Sol. Gen. I see you do not remember the particular, nor do we desire it of you.

Bridgman. They did not deny it, nor confess it.

Sol. Gen. Then, in your apprehension, did they own that they delivered that paper to the king?

L. C. J. You must not ask that, Mr. Solicitor, it is not a fair question to ask him what he apprehended.

Sol. Gen. He said it before.

L. C. J. But his apprehensions are no evidence, and it is a sort of a leading question which we must not allow of.

Sol. Gen. Then if your lordship do not like it, I will not ask it; but I will ask him another question.

L. C. J. Ay, ten, if you will, so they be fair ones.

Sol. Gen. Was it upon the first or second time of their being examined?

Bridgman. I cannot tell, it was not the first time, all of it, I believe; for at the first time my lords the bishops made some scruple of answering or owning any thing; and whatsoever they owned, they said, they hoped it should not be made use of to their prejudice. I remember no reply that was made, nor any thing farther, only my lord chancellor said, they were not to capitulate with their prince; but they were required to answer the questions that were asked them.

Sol. Gen. What were those questions?

Bridgman. I have told you already, as well as I can remember.

Sol. Gen. But did you take it upon the main that they owned the delivery of that paper to the king?

Just. Powell. Mr. Solicitor, you have been told you are to ask no such questions.

Sir R. Sawyer. Nor never was there such wire-drawing of a witness in this world before.

L. C. J. Pray sit still, sir Robert Sawyer, you are not to teach us what we are to do; Mr. Solicitor must ask questions that are pro-

per for him, and not such as these; but the court must correct him, and not you.

Sol. Gen. Mr. Bridgman is very cautious, and he is to be commended for it; but we would get the truth out of him if we could. Pray, Sir, if you can remember, recollect yourself, whether by any question to that purpose, it was believed that they did own the delivery of the paper to the king.

Bridgman. I told you, Mr. Solicitor, as to that at first, that I do not remember the very words of the question; but I believe there was nobody doubted that that was not the paper.

Sol. Gen. You speak well in your way; but these gentlemen are very unwilling you should tell your opinion.

L. C. J. His opinion is no evidence, therefore you must not ask any such questions, Mr. Solicitor.

Bridgman. As soon as the petition was delivered, within a few hours after I saw it, the king shewed it to several people, and he said, it was the petition the bishops had delivered; he took it into his own custody, and afterwards commanded me to write a copy of it, and there was no copy made of it but that one; but notwithstanding that, I do remember I did see a copy of the petition, within a day or two after it was presented about the town.

Sol. Gen. Pray how many days was this before the discourse in council upon their examination?

Bridgman. How many days was what, Sir?

Sol. Gen. When the king gave the paper to be copied?

Bridgman. It was upon the Sunday.

Sol. Gen. But you say, as you believe, it was in a few hours after the paper was delivered to the king that you did see it?

Just. Powell. But what makes him say, that this was delivered to the king, but only hearsay?

L. C. J. Pray, Mr. Solicitor, will you produce that which is evidence, and not spend our time in that which is not?

Sol. Gen. My lord, I would make no more of it than it is.

Serj. Levinz. It is a shameful thing to offer such things in a court of justice.

Serj. Pemberton. It is a practice that ought not to be endured.

L. C. J. Pray, brothers, be quiet, or I'll turn him loose upon you again, if you'll not be quiet: What is the matter? Cannot you let us alone? We shall do every body right. Come, to shorten this matter, I ask you but this one question, and that may satisfy any one that has common honesty about him: do you remember whether or no they were asked, if that was the petition that they delivered to the king?

Bridgman. My lord, I have answered that question as directly as I can; I do not positively remember that that was the question.

L. C. J. Mr. Solicitor-General, you must be satisfied when proper questions are fairly answered, and therefore, pray, be quiet.

Att. Gen. However, we pray we may ask

the clerks of the council; it may be they may remember more—Sir John Nicholas, you were at the council-table that day my lords the bishops were examined about this paper?

Sir J. Nicholas. Yes, Sir, I was.

Att. Gen. Pray did you observe that the king produced the petition?

Sir J. Nicholas. No, indeed, I did not see it.

Att. Gen. Did you observe any thing that passed there in discourse?

Sol. Gen. Did you observe any questions that were asked the bishops, either by the king or by my lord chancellor?

Sir J. Nicholas. I think my lord chancellor did ask them, if that was their hands to the petition, and they owned it.

Sol. Gen. Do you remember whether they owned, that they delivered that paper to the king?

L. C. J. I'll ask you, sir John Nicholas, did my lord chancellor ask them this question, is this the petition you delivered to the king?

Sir J. Nicholas. I do not remember that. [Then there was a great shout.]

Sol. Gen. Here's wonderful great rejoicing that truth cannot prevail.

Serj. Pemberton. No, Mr. Solicitor, truth does prevail.

Sol. Gen. You are all very glad that truth is stifled, Mr. Serjeant.

Serj. Trinder. Pray, sir John Nicholas, let me ask you one question; was there any discourse about delivering that petition to the king?

Sir J. Nicholas. Indeed I do not remember it.

Sol. Gen. There's Mr. Pepys, we'll examine him. [Mr. Pepys sworn.]

L. C. J. Come, I'll ask the questions; were you at the council-board when my lords the bishops were committed?

Mr. Pepys. Yes, I was.

L. C. J. What were the questions that were asked, either by the king, or by my lord chancellor?

Mr. Pepys. My lord, I would remember as well as I could; the very words, and the very words of the question, were, I think, My lords, do you own this paper? I do not remember any thing was spoken about the delivering; but I believe it was understood by every body at the table, that that was the paper that they had delivered.

L. C. J. Well, have you done now? But to satisfy you, I'll ask this question; Was this question asked, My lords, was this the paper you delivered to the king?

Mr. Pepys. No, my lord.

Att. Gen. Pray, Sir, do you remember whether the king himself asked the question?

Mr. Pepys. You mean, I suppose, Mr. Attorney, that these were the words, or something that imported their delivering it to the king.—Att. Gen. Yes, Sir.

Mr. Pepys. Truly, I remember nothing of that.

Sol. Gen. Did you observe any discourse concerning their delivery of it to the king?

Mr. Pepys. Indeed, Mr. Solicitor, I do not.

Att. Gen. Swear Mr. Musgrave. [Mr. Musgrave sworn.]

L. C. J. You hear the question, Sir, what say you to it?

Mr. Musgrave. My lord, I will give as short an account of it as I can: The first time after his majesty had produced the petition, and it was read at the board, his grace the lord archbishop of Canterbury, and the other six reverend lords the bishops, were called in, and it was asked of them, if they owned that, or if it was their hands? My lord archbishop, in the name of the rest, did decline answering, upon the account that they were there as criminals and were not obliged to say any thing to their own prejudice, or that might hurt them hereafter; but if his majesty would command them, and if he would promise that no advantage should be made of whatsoever they confessed, then they would answer the question: his majesty made no answer to that, but only said he would do nothing but what was according to law; whereupon the bishops were ordered to withdraw, and being called in a second time, the petition was shewn to them, and they were asked if they did own it, or if it was their hands? And I think my lord archbishop did then say, we will rely upon your majesty, and some such general thing was said, and then they did all own that it was their hands: I cannot say the petition was read to them.

Just. Powell. Mr. Blathwayt, as I remember, said it was the third time.

Mr. Musgrave. It was the second time, to the best of my remembrance.

L. C. J. Pray, Sir, was there any question to this purpose; Is this the paper you delivered to the king?

Mr. Musgrave. I do not remember that ever any such direct question was asked.

Just. Allybone. But, as my brother Pemberton did very well before distinguish, there is a great deal of difference between the owning the subscription of a paper, and between the owning of that paper. Mr. Pepys did say that they did own the paper, and upon my word that will look very much like a publication.

Mr. Musgrave. I remember, my lord, there was at the same time a question asked, because several copies had gone about the town, whether they had published it? And my lord archbishop did say, he had been so cautious, that he had not admitted his own secretary, but writ it all himself; and the rest of the bishops did say, they did not publish it, nor ever gave any copies of it.

Att. Gen. My lord, I confess, now it is to be left to the jury upon this point, whether tho' there were not a positive witness that was by when the thing was done, yet upon this evidence the jury can find any otherwise than that the thing was done; truly, I think, we must leave it as a strong case for the king: I could have wished, indeed, for the satisfaction of every body, that the proof would have come up to that; but we must make it as strong for

the king, upon the evidence given, as it will bear. Now, my lord, take all this whole matter together, here is a paper composed, framed, and written by seven learned men, and this must be written by such persons, sure for some purpose. It is directed as a petition to the king, and this petition did come to the hands of the king (for the king produces it in council) and my lord archbishop, and the rest of the bishops, owned their hands to it. Then the question is, my lord, whether or no there be any room for any body living to doubt in this case, that this was not delivered by my lords the bishops to the king, though it be not a conclusive evidence of a positive fact; yet unless they shew something on the other side, that may give way for a supposition to the contrary, that it came out of their hands by surprize, or that any body else delivered it to the king, without their knowledge or consent, here must needs be a very violent presumption that they did do it; and when nothing of that is said on their side, can any jury upon their consciences say, that it was not published by them? And it being found in Middlesex, though it might be written and composed in Surrey, yet surely we have given a convincing evidence, that either they published it, or caused it to be published in Middlesex. [Pray call Mr. Graham.]

Crier. He is gone out of the hall.

Sol. Gen. My lord, there is in law a presumption that is evidence, though there be no positive proof.

Sir R. Sawyer. But not in an information for a libel.

Sol. Gen. This is a mere question of fact; there is no such distinction in the law; for it is plain, if these lords, or any of them, did consent and agree to the publishing of this paper in Middlesex, they are guilty of this information; and whether they are guilty or not guilty, we do rely upon the circumstances proved, which are violent: First, that they were the men that contrived, and set their hands to it, and so were the authors of it, is undeniable; for they have owned it: men of their learning and parts never did any such thing in vain: and then that they were concerned in the publishing of it in Middlesex, we offer for proof that which was said by Mr. Bridgman and Mr. Blathwayt, who, though they do not come directly and expressly to the formal words of such a question, yet they tell you, especially Mr. Blathwayt, that they did apprehend it, and it was the collection of all their thoughts, and they took it for granted, as a thing that every body was satisfied in, that they did deliver that paper to the king. I must confess, and agree, there is no proof of the delivery of it by my lords the bishops to the king; but we know very well, that it is no wonder, when a paper is libellous, that men should use all the skill they can to publish it with impunity: and this is a thing that was done after some time of premeditation and serious consultation; for it was some days after the order for reading the declaration was published, that this was framed

and delivered, and it concerned them to be wary (as it seems they have been); but take this altogether, my lord, the paper being found in the king's hands, it is in these persons power, and it lies upon them to make it out plain, what became of this paper, or how it came out of their hands, which once lay in their own hands and custody? They can give an account of it, they can give light unto it. If they do not, I shall submit to the jury, whether this is not sufficient evidence to convict them; especially when, being examined, they did not make that their excuse. They never said, this paper indeed we signed, but we did not intend to publish it, we intended to stifle it; that had been some excuse: but for them to say now, they did not present it to the king, I must submit to the jury, whether they will believe it or not upon this evidence, that my lords, the bishops, did present it, or cause it to be presented to the king; then they are guilty of so much of this matter charged in the information. And I leave it to them, and their consciences, what they will think upon the whole.

Recorder. My lord, if your lordship please—

L. C. J. What, again? Well, go on sir Bartholomew Shower, if we must have a speech—

Recorder. Nay, my lord, I would not trespass upon your lordship.

L. C. J. Gentlemen of the Jury, here is an information against my lords the bishops: I think I need not trouble myself to open all of it, because I see you are men of understanding, men of great diligence, and have taken notes yourselves, some of you; therefore I shall say only something of the proof that is required in such a case, and of the manner of the proof that has been given in this case, and then tell you my opinion in point of law. Here is an information brought by Mr. Attorney General, on behalf of the king, against these reverend fathers of the church, the archbishop and the rest; and it is for publishing a seditious libel, under the pretence of a petition, in which are contained the words that are seen. Gentlemen, the information is long; it tells you, that the king, out of his gracious clemency to all his loving subjects, and for other considerations, had thought fit to publish a declaration of indulgence, that all his loving subjects might have liberty of conscience, upon the 4th of April, in the third year of his reign, and that this was set forth by the king; and that the king, of his farther grace, about the 27th of April then next following—

Mr. Finch. I humbly beg your lordship's favour.

L. C. J. What say you, Mr. Finch?

Mr. Finch. I ask your pardon for breaking in upon you when you are directing the jury. I know I should not do it, but I hope you will not be angry with me for it.

L. C. J. If I thought you did any service to your client, I should willingly hearken to you.

Mr. Finch. That which I humbly offer to

your lordship, is only to remember your lordship where we were.

L. C. J. Go on, Sir.

Mr. Finch. I would only say this, my lord, the question is, whether this be evidence or no?

L. C. J. I am sorry, Mr. Finch, you have that opinion of me, as to think I should not leave it fairly to the jury.

Mr. Finch. I only speak it, my lord, because if it be evidence, we have other matters to offer in answer to that evidence, and in our own defence.

L. C. J. If you have more to offer, why did you conclude here, and let me begin to direct the jury? But since you say you have other matter to offer, we will hear it.

Serj. Pemberton. My lord, we submit to your lordship's direction.

L. C. J. No, no, you do not; you say you have further matter to offer.

Mr. Pollexfen. My lord, we shall rest it here.

L. C. J. No, no, I will hear Mr. Finch. Go on, my lords the bishops shall not say of me, I would not hear their counsel; I have been already told of being counsel against them, and they shall never say that I would not hear their counsel for them.

Serj. Levinz. My lord, we beseech your lordship, go on with your directions; for all that Mr. Finch said, was only that this was not sufficient evidence.

L. C. J. No, brother, he says you have a great deal more to offer, and I will not refuse to hear him. The court will think there was something more than ordinary, therefore I will hear him; such a learned man as he shall not be refused to be heard by me, I will assure you. Why don't you go on, Mr. Finch?

Mr. Finch. My lord, I beg your pardon for interrupting you; but all that I was going to say would have amounted to no more than this, that there being no evidence against us, we must of course be acquitted.

Just. Holl. My lord did intend to have said as much as that, I dare say.

L. C. J. Well, gentlemen of the jury, we have had interruption enough—

Sol. Gen. My lord, I must beg your pardon for interrupting you now; and I am very glad these gentlemen have given us this occasion, because we shall now be able to clear this point. There is a fatality in some causes, my lord, and so there is in this; we must beg your patience for a very little while, for we have notice that a person of a very great quality is coming,* that will make it appear, that my lords the bishops made their addresses to him, to be introduced that they might deliver the paper to the king.

L. C. J. Well—you see what comes of the interruption, gentlemen, now we must stay—

* "Such sort of witnesses were no doubt always at hand when wanted." Speech of Mr. Erskine in support of a motion for a new trial in the dean of St. Asaph's case, A. D. 1783, in this Collection.

[Then there was a pause for near half an hour.]

Att. Gen. Pray, my lord, put the case that a man writes a libel in one county, and it is found in another, is not he answerable, unless he can shew something that he may satisfy the jury how it came there?

Sol. Gen. Ought he not to give an account what became of it?

L. C. J. No: look you, Mr. Attorney, you must look to your information, and then you will find the case that you put does not come up to it: it is for writing, composing, and publishing, and causing to be published, and all this is laid in Middlesex: now you have proved none of all these things to be done in the county.

Att. Gen. They did in Middlesex confess it was theirs.

L. C. J. Ay, but the owning their hands is not a publication in Middlesex, and so I should have told the jury.

Mr. Finch. I beg your lordship's pardon for interrupting you.

Att. Gen. But, my lord, does it not put the proof upon them, to prove how it came out of their hands into the king's hands?

L. C. J. No, the proof lies on your part.

Mr. Pollexfen. Pray, my lord, give us your favour to dismiss us and the jury.

Sol. Gen. My lord, our witnesses will be here presently.

Att. Gen. Sure, my lord, the presumption is on our side.

Just. Powell. No, the presumption is against you; for my lord archbishop lived in Surrey, and it is proved was not out of Lambeth-house since Michaelmas, till he came before the council.

Serj. Pemberton. Pray, good my lord, we stand mightily uneasy here, and so do the jury, pray dismiss us.

L. C. J. I cannot help it, it is your own fault.—[Then there was another great pause.]

L. C. J. Sir Bartholomew Shower, now we have time to hear your speech, if you will.

Mr. Pollexfen. My lord, there is nobody come, nor I believe will come.

Sol. Gen. Yes, he will come presently; we have had a messenger from him. [Call Mr. Graham.]

Crier. He is gone, and said he would come presently.

Sol. Gen. My lord, he will bring our witnesses with him—[Then there was another pause.]

Serj. Pemberton. My lord, this is very unusual to stay thus for evidence.

L. C. J. It is so; but I am sure you ought not to have any favour—Mr. Solicitor, are you assured that you shall have this witness that you speak of?

Sol. Gen. Yes, my lord, he will be here presently.

L. C. J. We have staid a great while already, and therefore is fit that we should have some oath made that he is coming.

Sol. Gen. The crier tells you, that Mr. Graham did acquaint him, that he would return presently.

L. C. J. Give him the book.

Sol. Gen. Let your left-hand give your right-hand the oath. [The Crier sworn.]

L. C. J. By the oath that you have taken, did Mr. Graham tell you, there was any further witness coming in this case?

Crier. Yes, my lord, he did; he went out of the hall, and returned when your lordship was directing the jury, and he asked me what the court were upon; and I told him you were directing the jury, and then he said, my lord Sunderland was a coming, but he would go and prevent him; and afterwards he returned, and finding your lordship did not go on to direct the jury, he said, he would go again for my lord Sunderland, whom he had sent away, and he is now gone for him, and he said he would bring him with him presently.

L. C. J. Well then, we must stay till the evidence for the king comes, for now there is oath made that he is coming—[And after a considerable pause the Lord President came.]

Att. Gen. My lord, we must pray that my lord president may be sworn in this case, on behalf of the king. [The Lord President sworn.]

Att. Gen. My lord, with your lordship's favour, I would ask my lord president a question: your lordship remembers where we left this cause; we have brought it to this point, That this petition came to the king's hands: that it is a petition written by my lord archbishop and subscribed by the rest of my lords the bishops; but there is a difficulty made, whether this petition thus prepared and written was by them delivered to the king, and whether my lords the bishops were concerned in the doing of it, and were privy, or parties to the delivery? Now that which I would ask your lordship, my lord president, is, Whether they did make their application to your lordship to speak to the king?

Sol. Gen. Did they make their application to your lordship upon any account whatsoever?

Lord President. My lord, my lord bishop of St. Asaph, and my lord bishop of Chichester came to my office, and told me they came in the names of my lord archbishop of Canterbury, and four others of their brethren, and themselves, with a petition, which they desired to deliver to his majesty, and they did come to me to know which was the best way of doing it, and whether the king would give them leave to do it or not? They would have had me read their petition, but I refused it, and said, I thought it did not at all belong to me, but I would let the king know their desire, and bring them an answer immediately, what his pleasure was in it; which I did. I acquainted the king, and he commanded me to let my lords the bishops know, they might come when they pleased, and I went back and told them so; upon which they went and fetched the rest of the bishops, and

when they came, immediately they went into the bed-chamber, and into another room, where the king was. This is that I know of the matter.

Sol. Gen. About what time was this, pray my lord?

Lord President. I believe there could not be much time between my coming from the king, and their fetching their brethren, and going in to the king.

Sol. Gen. They were with the king that day?—*Lord President.* Yes, they were.

Sol. Gen. Was this before they appeared in council?

Lord President. Yes, it was several days before.

Sol. Gen. Then I think now, my lord, the matter is very plain.

Just. Allynbone. Did they acquaint your lordship that their business was to deliver a petition to the king?

Lord President. Yes, they did.

Sol. Gen. And they would have had my lord read it, he says.

Att. Gen. And this was the same day that they did go in to the king?

Lord President. The very same day, and I think the same hour; for it could not be much longer.

L. C. J. Now it is upon you truly; it will be presumed to be the same, unless that you prove that you delivered another.—Pray, my lord, did you look into the petition?

Lord President. No, I refused it; I thought it did not concern me.

Just. Powell. Did you see them deliver it to the king, my lord?

Lord President. I was not in the room when it was delivered.

Just. Powell. They did open their petition to your lordship, did they?

Lord President. They offered me to read it, but I did refuse.

L. C. J. Will you ask my lord president any question, you that are for the defendants?

Sir R. Sawyer. No, my lord.

Sol. Gen. Then, my lord, we must beg one thing for the sake of the jury, if your lordship can turn yourself a little this way, and deliver the evidence you have given over again, that they may hear it.

Lord President. My lord, I will repeat as near as I can; I think I shall not vary the sense. The bishops of St. Asaph and Chichester came to my office, I do not know just the day when, but it was to let me know, that they came in the names of the archbishop, and four others of their brethren—Is it necessary I should name them?

L. C. J. Do it, my lord, if you can.

Lord President. They were the bishops of Ely, Bath and Wells, Bristol, and Peterborough; they came to let me know, in the name of the archbishop, those four, and themselves, that they had a petition to deliver to the king, if he would give them leave, and desired to know of me which was the best way to do it.

I told them I would know the king's pleasure, and bring them word again: they offered me their petition to read, but I did not think it fit for me to do it, and therefore I refused, and would not read it: but I went immediately to the king, and acquainted his majesty with it, and he commanded me to let them know they might come when they would, which I immediately did: they said they would go and speak with some of their brethren that were not far off: in the mean time I gave order that they should be admitted when they came, and they did in a little time return, and went first into the bed-chamber, and then into the room where the king was.

Sol. Gen. And this was before they came and appeared at the council?

Lord President. Yes, it was.

Mr. Pollexfen. Your lordship did not read any thing of the petition?

Lord Presid. No, Sir, I did not, I refused it.

Mr. Pollexfen. Nor does your lordship know what petition was delivered to the king?

Lord President. I did not know any thing of it from them then.

L. C. J. Now you may make your observations upon this two hours hence: now we shall hear what Mr. Finch had further to offer, I suppose.

[Then my Lord President went away.]

Sol. Gen. I think now it is very plain.

L. C. J. Truly, I must needs tell you, there was a great presumption before, but there is a greater now, and I think I shall leave it with some effect to the jury. I cannot see but here is enough to put the proof upon you. They came to the lord president, and asked him how they might deliver a petition to the king: he told them he would go see what the king said to it. They would have had him read their petition, but he refused it: he comes and tells them the king said they might come when they would: then those two that came to my lord president went and gathered up the other four (the archbishop indeed was not there) but they six came, and my lord president gave direction they should be let in, and they did go into the room where the king was. Now this, with the king's producing the paper, and their owning it at the council, is such a proof to me, as I think will be evidence to the jury of the publication.

Mr. Pollexfen. Then, my lord, thus far they only can go; the archbishop was not there, and so there is no evidence against him.

Sol. Gen. As to the writing, we have given proof against him, for it is all his hand.

Mr. Pollexfen. That still is in another country, and there is nothing proved to be done by my lord archbishop in Middlesex; and next, for the other six lords, my lord president does not say that this is the petition that they said they had to deliver to the king; nor did he see them deliver any thing to the king; but that is still left doubtful, and under your judgment, so that it stands upon presumption, not upon

proof, that this is the same, and left under consideration.

Att. Gen. Then we will leave it fairly to the jury upon this fact.

Mr. Pollexfen. If so, then we desire to be heard in our defence.

Sir R. Sawyer. May it please your lordship, and you gentlemen of the jury, you have heard this charge which Mr. Attorney has been pleased to make against my lords the bishops, and that is this, that they did conspire to diminish the royal authority, and regal prerogative, power, and government of the king, and to avoid the order of council; and in prosecution of this, they did falsely, maliciously and seditiously make a libel against the king, under pretence of a petition, and did publish the same in the king's presence.

This, gentlemen, is a very heinous and heavy charge; but you see how short their evidence is: the evidence they bring forth is only, that my lords the bishops presented the paper to the king in the most private and humble manner they could: that which they have been so many hours a proving, and which they cry up to be as strong an evidence as ever was given, proves it to be the farthest from sedition in the doing of it that can be: and you see what it is, it was a petition to be relieved against an order of council, which they conceive they were aggrieved by. They indeed do not deal fairly with the court nor with us, in that they do not set it forth that it was a petition.

L. C. J. That was over-ruled before.

Sir R. Sawyer. I do not insist upon it now so much an exception to the information, as I do the evidence. They set this forth to be a scandalous matter, but it only contains their reasons, whereby they would satisfy his majesty why they cannot comply in a concurrence with his majesty's pleasure; and therefore they humbly beseech the king, and beg and request him (as the words of it are) that his majesty would be pleased not to insist upon their distributing and reading of this declaration: so the petitioners, on behalf of themselves and the whole clergy of England, beg of the king that he would please not to insist upon it.

Gentlemen, you may observe it, that there is nothing in this petition that contains any thing of sedition in it; and it would be strange this petition should be *felo de se*, and by one part of it destroy the other. It is laid indeed in the information, that it was with intent and purpose to diminish the king's royal authority; but I appeal to your lordship, the court, and the jury, whether there be any one word in it, that any way touches the king's prerogative, or any tittle of evidence that has been given to make good the charge. It is an excuse barely for their non-compliance with the king's order, and a begging of the king with all humility and submission, that he would be pleased not to insist upon the reading of his majesty's declaration upon these grounds, because the dispensing power upon which it was founded, had

been several times in parliament declared to be against law, and because it was a case of that consequence that they could not in prudence, honour, or conscience concur in it.

My lord, Mr. Attorney has been pleased to charge in this information, that this is a false, malicious, and seditious libel: both the falsity of it, and that it was malicious and seditious, are all matters of fact, which, with submission, they have offered to the jury no proof of, and I make no question but easily to demonstrate the quite contrary.

For, my lord, I think it can be no question, but that any subject that is commanded by the king to do a thing which he conceives to be against law, and against his conscience, may humbly apply himself to the king, and tell him the reason why he does not that thing he is commanded to do, why he cannot concur with his majesty in such a command.

My lord, that which Mr. Attorney did insist upon in the beginning of this day (and he pretended to cite some cases for it) was, that in this case, my lords the bishops were not sued as bishops, nor prosecuted for their religion. Truly, my lord, I do not know what they are sued for else: the information is against them as bishops, it is for an act they did as bishops, and no otherwise; and for an act they did, and do conceive they lawfully might do with relation to their ecclesiastical polity, and the government of their people as bishops.

The next thing that Mr. Attorney offered was, That it was not for a non-feasance, but for a feasance. It is true, my lord, it is for a feasance in making of the petition, but it was to excuse a non-feasance, the not reading according to the order; and this sure was lawful for all the bishops as subjects to do; and I shall shew it was certainly the duty of my lords the bishops, or any peer of this realm, to do the same in a like case. It was likewise said, they were prosecuted here for affronting the government, and intermeddling with matters of state; but I beg your lordship and the jury to consider, whether there is one tittle of this mentioned in the petition, or any evidence given of it. The petition does not meddle with any thing of any matter of state, but refers to an ecclesiastical matter, to be executed by the clergy, and to a matter that has relation to ecclesiastical causes; so that they were not busybodies, or such as meddled in matters that did not relate to them, but that which was properly within their sphere and jurisdiction.

But after all, there is no evidence, nor any sort of evidence that is given by Mr. Attorney, that will maintain the least tittle of this charge; and how he comes to leave it upon this sort of evidence I cannot tell; all that it amounts to is, That my lords the bishops being grieved in this manner, made this petition to the king in the most private and respectful manner; and for him to load it with such horrid black epithets, that it was done libellously, maliciously, and scandalously, and to oppose the king and government, 'tis very hard; 'tis a case of a very

extraordinary nature, and I believe my lords the bishops cannot but conceive a great deal of trouble, that they should lie under so heavy a charge, and that Mr. Attorney should draw so severe an information against them, when he has so little proof to make it out.

My lord, by what we have to say to it, we hope we shall give your lordship and the jury satisfaction, that we have done but our duties, supposing here has been a sufficient evidence of the fact given, which we leave to your lordship and the jury.

My lord, we say in short, That this petition is no more than what any man, if he be commanded to do any thing, might humbly do it, and not be guilty of any crime: and, my lord, as to the matter of our defence, it will consist of these heads:

First, We shall consider the matter of this Petition.

Secondly, The manner of delivering it, according as they have given evidence here; and,

Thirdly, The persons that have delivered this petition. And we hope to make it appear, beyond all question, that the matter contained in this petition, is neither false nor contrary to law, but agreeable to all the laws of the land in all times. We shall likewise shew you (though that appear sufficiently to you already) that the manner of delivering it was so far from being seditious, that it was in the most secret and private manner, and with the greatest humility and duty imaginable. And then as to the persons, we will shew you that they are not such as Mr. Attorney says, who meddle with matters of state, that are out of their sphere; but they are persons concerned, and concerned in interest in the case, to make this humble application to the king. And when we have proved all this matter, you will see how strangely we are blackened with titles and epithets which we no ways deserve, and of which, God be thanked, there is no proof.

For, my lord, for the matter of the petition, we shall consider two things.

The first is, the prayer, which is this; They humbly beg and desire of the king, on behalf of themselves and the rest of the clergy, that he would not insist upon the reading and publishing of this declaration.

Surely, my lord, there is nothing of falsity in this, nor any thing that is contrary to law, or unlawful for any man that is pressed to any thing, especially by an order of council; and this is nothing but a petition against an order of council; and if there be an order that commands my lords the bishops to do a thing that seems grievous to them, surely they may beg of the king that he would not insist upon it.

As for this matter, they were so well satisfied about it, and so far from thinking that it was any part of a libel, that they left it out of the information, and so have made a deformed and absurd story of it, without head or tail, a petition directed to nobody, and for nothing, it being without both title and prayer; so that this is plain, it was lawful to petition,

Then, my lord, the next thing is, the reasons which my lords the bishops come to acquaint the king with; why in honour and conscience they cannot comply with, and give obedience to this order; and the reasons, my lord, are two.

The first reason that is assigned, is, the several declarations that have been in parliament (several of which are mentioned) that such a power to dispense with the law, is against law, and that it could not be done but by an act of parliament; for that is the meaning of the word *illegal*, that has no other signification but *unlawful*; the same word in point of signification with the word *illicite*, which they have used in their information, a thing that cannot be done by law; and this they are pleased to tell the king, not as declaring their own judgments, but what has been declared in parliament; though if they had done the former, they being peers of the realm, and bishops of the church, are bound to understand the laws, especially when (as I shall come to shew you) they are made guardians of these laws; and if any thing go amiss, and contrary to these laws, they ought to inform the king of it.

My lord, the next thing is, Because it is a thing of so great moment, and the consequence that will arise from their publishing of this declaration, and that too, my lord (for the latter I shall begin first with) there can be no question about, or any pretence that this is libellous or false; for certainly it is a case of the greatest consequence to the whole nation that ever was, therefore it cannot be false or libellous to say so.

My lord, I would not mention this, for I am loth to touch upon things of this nature, had not the information itself made it the very gist of the charge; for the information (if there be any thing in it) says, that it was to diminish the king's prerogative and regal power in publishing that declaration.

Now, my lord, what the consequence of this would be, and what my lords the bishops meant, by saying it was a cause of great moment, will appear, by considering that which is the main clause in the Declaration, at which my lords the bishops scrupled, which is the main stumbling-block to my lords, and has been to many honest men besides, and that is this:

'We do likewise declare, it is our royal will and pleasure, that from henceforth the execution of all and all manner of penal laws, in matters ecclesiastical, for not coming to church, or not receiving the sacrament or for any other non-conformity to the religion established; or for or by reason of the exercise of religion in any manner whatsoever, be immediately suspended; and the further execution of the said penal laws, and every of them, is hereby suspended.'*

* Here the Lord Chief Justice speaking aside, said,

L. C. J. I must not suffer this; they in-

Now, my lord, this clause either is of some legal effect and signification, or it is not. If Mr. Attorney, or the king's counsel, do say it is of no effect in law, then there is no harm done; then this petition does no ways impeach the king's prerogative, in saying, it has been declared in parliament, according as the king's counsel do agree the law to be.

But, my lord, if it have any effect in law, and these laws are suspended by virtue of this clause in the declaration; then certainly, my lord, it is of the most dismal consequence that can be thought of, and it behoved my lords, who are the fathers of the church, humbly to represent it to the king.

For, my lord, by this declaration, and particularly by that clause in it, not only the laws of our Reformation, but all the laws for the preservation of the Christian religion in general are suspended, and become of no force; if there be such an effect in law wrought by this declaration as is pretended; that is, that the obligation of obedience to them ceaseth; the reason of it is plain, the words cannot admit of such a quibble as to pretend, that the suspending the execution of the law, is not a suspending of the law; for we all know the end of every law, in its primary intent, is obedience to it; that of the penalty comes in by the way of punishment and recompence for their disobedience.

Now, my lord, if this declaration does discharge the king's subjects from their obedience to, and the obligation from those laws; then pray, my lord, where are we? Then all the laws of the Reformation are suspended, and the laws of Christianity itself, by those latter words, [or for or by reason of religion in any manner whatsoever] so that it is not confined to the Christian religion, but all other religions are permitted under this clause; and thus all our laws for keeping the Sabbath, and which distinguish us from heathens, will be suspended too.

My lord, this is such an inconvenience as, I think, I need name no more; and it is a very natural consequence from that clause of the declaration; it discharges at once all ministers

tend to dispute the king's power of suspending laws.

Just. *Powell*. My lord, they must necessarily fall upon the point; for if the king hath no such power (as clearly he hath not in my judgment), the natural consequence will be, that this petition is no diminution of the king's regal power, and so not seditious or libellous.

L. C. J. Brother, I know you are full of that doctrine; but however, my lords the bishops shall have no occasion to say, that I deny to hear their counsel. Brother, you shall have your will for once, I will hear them, let them talk till they are weary.

Just. *Powell*. I desire no greater liberty to be granted them, than what in justice the court ought to grant, that is, to hear them in defence of their clients.

and clergymen from performing their duty in reading the service of the church; it discharges their hearers from attending upon that service.

When a law is suspended, the obligation thereof is taken away; and those that before thought themselves bound to obey, now conclude they are not so obliged; and what a mischief that will be to the church, which is under the care of my lords the bishops, your lordship will easily apprehend.

These things, my lord, I only mention, to shew the great and evil consequences that apparently follow upon such a declaration, which made my lords the bishops decline obeying the order, and put them under a necessity of applying thus to the king, to acquaint him with the reasons why they could not comply with his commands to read this declaration to the people, because the consequences thereof were so great, it tending naturally to lead the people into so great an error, as to believe those laws were not in force, when in truth and reality they are still in force, and continue to oblige them.

And that being the second reason in this petition, I come next to consider it, to wit, that the parliament had often declared this pretended power to be illegal; and for that we shall read the several records in parliament mentioned in their petition, and produce several ancient records of former parliaments that prove this point; and particularly in the time of Richard the second, concerning the statute of provisors, where there were particular dispensations for that statute, the king was enabled to do it by act of parliament, and could not do it without.

L. C. J. Pray, sir Robert Sawyer, go to your proofs, and reserve your arguments till afterwards.

Sir R. Sawyer. My lord, I do but shortly mention these things; so that, my lord, as to the matter of this petition, we shall shew you, that it is true and agreeable to the laws of the land.

Then, my lord, as to the manner of delivering it, I need say no more, but that it is plain from their evidence, that it was in the most private and humble manner. And, as the lord president said, leave was asked of the king for them to be admitted to present it: leave was given, and accordingly they did it.

We come then, my lord, to the third thing, the persons, these noble lords; and we shall shew they are not busy-bodies, but in this matter have done their duty, and meddled with their own affairs. That, my lord, will appear,

First, by the general care that is reposed in them by the law of the land: they are frequently in our books called the king's spiritual judges; they are entrusted with the care of souls, and the superintendency over all the clergy is their principal care.

But, besides this, my lord, there is another special care put upon them by the express words of an act of parliament; for over and

above the general care of the church, by virtue of their offices as bishops, the act of 1 Eliz. cap. 2. makes them special guardians of the law of uniformity, and of that other law in his late majesty's reign; where all the clauses of that statute of 1 Eliz. are revived and made applicable to the present state of the church of England. Now in that statute of 1 Eliz. there is this clause:

'And for the due execution hereof, the queen's most excellent majesty, the lords spiritual and temporal, and all the commons in this present parliament assembled, do, in God's name, earnestly require all the archbishops, and bishops, and other ordinaries, that they do endeavour themselves, to the utmost of their knowledges, that the due and true execution hereof may be had throughout their dioceses and charges, as they will answer before God, for such evils and plagues where-with Almighty God may justly punish his people, for neglecting this good and wholesome law.'

This is the charge that lies upon the bishops, to take care of the execution of that law; and I shall pray by and bye, that it may be read to the jury.

Sol. Gen. This is very well, indeed! To what purpose?

Sir R. Sawyer. So that, my lord, by this law it is plain, that my lords the bishops, upon pain of bringing upon themselves the imprecation of this act of parliament, are obliged to see it executed; and then, my lord, when any thing comes under their knowledge, especially if they are to be actors in it, that hath such a tendency to destroy the very foundation of the church, as the suspension of all the laws that related to the church must do, it concerns them that have no other remedy, to address the king, by petition, about it.

For that Mr. Attorney, my lord, has agreed, that if a proper remedy be pursued in a proper court, for a grievance complained of, though there may be many hard words that else would be scandalous, yet being in a regular course, they are no scandal: and it is said Lake's case, in my lord Hobart.

My lord, we must appeal to the king, or we can appeal to nobody, to be relieved against an order of council with which we are aggrieved; and it is our duty so to do, according to the care that the law hath placed in us.

Besides, my lord, the bishops were commanded by this order to do an act relating to their ecclesiastical function, to distribute it to be read by their clergy: and how could they in conscience do it, when they thought part of the declaration was not according to law?

Pray, my lord, what has been the reason of his majesty's consulting of his judges? And if his majesty, or any the great officers, by his command, are about to do any thing that is contrary to law, was it ever yet an offence to tell the king so? I always looked upon it as the duty of an officer or magistrate to tell the king what is law, and what is not law.

Cavendish's case, in the queen's time, there was an office granted of the return of the writs of supersedeas in the court of Common-Pleas; and he comes to the court, and desires to be put into the possession of the office: the court told him, they could do nothing in it, but he must bring his assize. He applies to the queen, and she sends under the privy-seal, a command to sequester the profits, and to take security to answer the profits, as the judgment of the law should go: but the judges there return an answer, that it was against law, and they could not do it. Then there comes a second letter, reciting the former, and commanding their obedience: the judges returned for answer, they were upon their oaths, and were sworn to keep the laws, and would not do it.

My lord, the like was done in the time of my lord Hobart: we have it reported in Anderson, in a case where a prohibition had gone: there came a message from court, that a consultation should be granted; and that was a matter wherein there were various opinions, whether it was *ex necessitate*, or discretionary; but there they returned, that it was against law for any such message to be sent.

Now here, my lord, is a case full as strong: my lords the bishops were commanded to do an act, which they conceived to be against law, and they declined it, and tell the king the reason; and they have done it in the most humble manner that could be, by way of petition. If they had done (as the civil law terms it) *Rescribere* generally, that had been lawful; but here they have done it in a more respectful manner by an humble petition. If they had said the law was otherwise, that sure had been no fault; but they do not so much as that, but they only say, it was so declared in parliament: and they declare it with all humility and dutifulness. So that, my lord, if we consider the persons of the defendants, they have not acted as busy-bodies; and therefore, as this case is, when we have given our evidence, here will be an answer to all the implications of law that are contained in this information: for they would have this petition work by implication of law, to make a libel of it; but by what I have said, it will appear, there was nothing of sedition, nothing of malice, nothing of scandal in it, nothing of the salt, and vinegar, and pepper that they have put into the case. We shall prove the matters that I have opened for our defence, and then, I dare say, your lordship and the jury will be of opinion, we have done nothing but our duty.

Mr. Finch. May it please your lordship, and you, gentlemen of the jury, this information sets forth (as you may observe upon opening it) that the king having, by his royal prerogative, set forth his declarations that we have read, and made an order of council for the reading the said declarations in the churches, and that the archbishops and bishops should severally send them into their dioceses, to be read; my lords the bishops, that are the de-

fendants, did consult and conspire together to diminish the kingly authority, and royal prerogative of the king, and his power and government in his royal prerogative, in setting forth his declaration; and that, in prosecution of that conspiracy, they did contrive (as it was laid in the information) a malicious, seditious, false, and feigned libel, under pretence of a petition, and so set forth the petition; and that they published the petition in the presence of the king.

To this charge in the information, not guilty being pleaded, the evidence that hath been given for the king, I know, hath been observed by the court and jury, and I know will be taken into consideration, how far it does come up to the proof of the delivery of this petition by my lords the bishops; for all that was said till my lord president was pleased to come, was no evidence of any delivery at all; and my lord president's evidence is, that they were going to deliver a petition; but whether they did deliver it, or did it not, or what they did deliver, he does not know. This is all the evidence that has been given for the king.

But supposing now, my lord, that there were room to presume that they had delivered this Petition set forth in the information, let us consider what the question is between the king and my lords the bishops: the question is, whether they are guilty of contriving to diminish the king's regal authority and royal prerogative, in his power and government, in setting forth this declaration? Whether they are guilty of the making and presenting a malicious, seditious, and scandalous libel; and whether they have published it, as it is said in the information, in the king's presence?

So that the question is not now reduced to this, Whether this paper, that is set forth in the information, was delivered to the king by my lords the bishops; but whether they have made a malicious and scandalous libel, with an intent to diminish the king's royal prerogative, and kingly authority? and then, if you, gentlemen, should think that there is evidence given sufficient to prove that my lords the bishops have delivered to the king that paper which is set forth in the information; yet, unless they have delivered a false, malicious, seditious, and scandalous libel; unless they have published it, to stir up sedition in the kingdom; and unless they have contrived this by conspiracy, to diminish the king's royal prerogative and authority, and that power that is said to be in the king, my lords the bishops are not guilty of this accusation.

There are in this declaration several causes, which, upon reading of the information, I am sure, cannot but have been observed by you, gentlemen of the jury; and one special cause hath been by the counsel already opened to you, and I shall not enlarge upon it.

My lord, this petition that is thus delivered to the king, if it be a libel, a scandalous and seditious libel (as the information calls it) it must be so, either for the matter of the petition,

or for the persons that delivered the petition, or for the manner of their presenting and delivering it: but neither for the matter, nor for the persons, nor for the manner of presenting it, is there any endeavour to diminish the king's royal prerogative, nor to stir up sedition, nor reflection upon the king's royal and kingly authority.

The petition does humbly set forth to his majesty, that there having been such a declaration, and such an order of council; they did humbly represent to his majesty, that they were not averse to any thing commanded them in that order, in respect to the just and due obedience that they owed to the king, nor in respect of their want of a due tenderness to those persons to whom the king had been pleased to shew his tenderness; but the declaration being founded upon a power of dispensing, which had been declared illegal in parliament several times, and particularly in the years 1662, 72, and 85, they did humbly beseech his majesty (they not being able to comply with his command in that matter) that he would not insist upon it.

Now, my lord, Where is the contrivance to diminish the king's regal authority, and royal prerogative?

This is a declaration founded upon a power of dispensing, which undertakes to suspend all laws ecclesiastical whatsoever; for not coming to church, or not receiving the sacrament, or any other non-conformity to the religion established, or for, or by reason of the exercise of religion in any manner whatsoever; ordering that the execution of all those laws be immediately suspended, and they are thereby declared to be suspended; as if the king had a power to suspend all the laws relating to his established religion, and all the laws that were made for the security of our reformation. These are all suspended by his majesty's declaration (as it is said) in the information, by virtue of his royal prerogative, and power so to do.

Now, my lord, I have always taken it, with submission, that a power to abrogate laws, is as much a part of the legislature, as a power to make laws: a power to lay laws asleep, and to suspend laws, is equal to a power of abrogating them; for they are no longer in being, as laws, while they are so laid asleep, or suspended: and to abrogate all at once, or to do it time after time, is the same thing; and both are equally parts of the legislature.

My lord, in all the education that I have had, in all the small knowledge of the laws that I could attain to, I could never yet hear of, or learn, that the constitution of the government in England was otherwise than thus, that the whole legislative power is in the king, Lords, and Commons; the king and his two houses of parliament. But then, if this declaration be founded upon a part of the legislature, which must be by all men acknowledged not to reside in the king alone, but in the king, Lords, and Commons, it cannot be a legal and true power, or prerogative.

This, my lord, has been attempted but in the last king's time; it never was pretended till then; and in that first attempt, it was so far from being acknowledged, that it was taken notice of in parliament, and declared against: so it was in the years 1662, 1672.

In the year 1662, where there was but the least umbrage of such a dispensing power; although the king had declared, in his Speech to the parliament, that he wished he had such a power, which his Declaration before seemed to assume; the parliament was so jealous of this, that they immediately made their application to his majesty, by an address against the Declaration; and they give reasons against it, in their address: one in particular was, 'That the king could not dispense with those laws without an act of parliament.'

There was another attempt in 1672, and then, after his majesty had, in his speech mentioned his declaration to them, the parliament there again, particularly the House of Commons, did humbly address to his majesty; setting forth, that this could not be done by law, without an act of parliament: and your lordship, by and bye, upon reading the record, will be satisfied what was the event of all this. His majesty himself was so far pleased to concur with them in that opinion, that he cancelled his Declaration, tore off the seal, and caused it to be made known to the House of Lords, by the lord chancellor, who, by his majesty's command, satisfied the House of it, that his majesty had broken the seal, and cancelled the Declaration; with this further declaration, which is entered in the records of the House, 'That it should never be drawn into example, or consequence.'

My lord, the matter standing thus, in respect to the king's prerogative, and the declarations that had been made in parliament; consider next, I beseech you, how far my lords the bishops were concerned in this question, humbly to make their application to the king.

My lords the bishops lying under a command to publish this declaration, it was their duty, as peers of the realm, and bishops of the Church of England, humbly to apply themselves to his majesty, to make known their reason why they could not obey that command; and they do it with all submission, and all humility, representing to his majesty what had been declared in parliament; and it having been so declared, they could not comply with his order, as apprehending that this declaration was founded upon that which the parliament declared to be illegal; and so his majesty's command to publish this declaration would not warrant them so to do. This they did as peers; and this they had a right to do as bishops, humbly to advise the king.

For, suppose, my lord (which is not to be supposed in every case, nor do I suppose it in this.) But suppose that there might be a king of England that should be misled. I do not suppose that to be the case now, I say, but I

know it hath been the case formerly), that the king should be environed with counsellors that had given him evil advice; it hath been objected as a crime against such evil counsellors, that they would not permit and suffer the great men of the kingdom to offer the king their advice. How often do we say in Westminster-hall, that the king is deceived in his grant: there is scarce a day in the term, but it is said in one court or other; but it was never yet thought an offence to say so: and what more is there in this case?

My lord, if the king was misinformed, or under a misapprehension of the law, my lords, as they are peers, and as they are bishops, are concerned in it; and if they humbly apply themselves to the king, and offer him their advice, where is the crime?

My lord, these noble lords, the defendants, had more than an ordinary call to this; for besides the duty of their office, and the care of the church, that was incumbent on them as bishops, they were here to become actors; for they were, by that order of council, commanded themselves to publish it, and to distribute it to the several ministers in their several dioceses, with their commands to read it: therefore they had more than ordinary reason to concern themselves in the matter.

Next, we are to consider, my lord, in what manner this was done: they make their application to the king by an humble petition, with all the decency and respect that could be shewn; asking leave, first, to approach his person; and having leave, they offered my lord president the matter of their petition, that nothing might seem hard or disrespectful, or as if they intended any thing that was unfit to be avowed. When they had taken all this care in their approach, and begging leave for it, they come secretly to the king in private, when he was all alone, and they humbly presented this petition to his majesty. Now, how this can be called the publication of a malicious and seditious libel, when it was but the presenting of a petition to the king alone; and how it can be said to be with an intent to stir up sedition in the people against his majesty, and to alienate the hearts of his people from him, when it was in this private manner delivered to him himself only, truly I cannot apprehend.

My lord, I hope nothing of this can be thought an offence: if the jury should think that there has been evidence sufficient given to prove that my lords the bishops did deliver this paper to the king; yet that is not enough to make them guilty of this information, unless this paper be likewise found to be in diminution of the king's royal prerogative and regal authority in dispensing with, and suspending of, all laws, without act of parliament: unless it be found to be a libel against the king to tell him, that in parliament it was so and so declared. And unless the presenting this by way of petition (which is the right of all people that apprehend themselves aggrieved, to approach his

majesty by petition) be a libelling of the king; and unless this humble petition, in this manner presented to the king in private, may be said to be a malicious and seditious libel, with an intent to stir up the people to sedition; unless all this can be found, there is no man living can ever find my lords the bishops guilty upon this information. Therefore, my lord, we will go on, and make out this matter that we have opened to your lordship, if Mr. Attorney and Mr. Solicitor think fit to argue the points that we have opened.

Mr. *Pollexfen*. Pray, my lord, spare me a word on the same side. For the first point, it is a point of law, whether the matter contained in this petition be a libel. The king's counsel pretend it is so, because it says, the declaration is founded upon a power the parliament has declared to be illegal. But we say, that whatsoever the king is pleased to say in any declaration of his, it is not the king's saying of it that makes it to be law. Now, we say, this declaration under the great seal, is not agreeable to the laws of the land; and that for this reason, because it does, at one blow, set aside all the law we have in England.

My lord, if this be denied, we must a little debate this matter; for they are almost all penal laws; not only those before the reformation, but since; upon which the whole government, both in church and state, does in a great measure depend.

Especially, my lord, in matters of religion, they are all penal laws: for, by the Act of Uniformity, which my lords the bishops are sworn to observe, and adjured by an express clause in the act, no man is to preach unless he be episcopally ordained; no man is to preach without a licence. If all this be set aside, I confess then, it will go very far into the whole ecclesiastical government. If this be denied, we are ready to argue that too.

L. C. J. They are to do so still.

Mr. *Pollexfen*. My lord, I am sure the consequence is otherwise, if this declaration signify any thing. And if it be the will of the king, my lord, the will of the king is what the law is. If so be the king's will be not consonant to the law, it is not obliging.

My lord, the cases that we have had of dispensations, are all so many strong authorities against a general or particular abrogation. My lord, that is a matter of law, which if it fall out to be any way doubtful, it will be fit to have it debated and settled.

If they will say, that the penal laws in matters ecclesiastical can be abrogated or nulled, or made void *pro tempore*, or for life, without the meeting of the king and people in parliament, I must confess, they say a great thing, as it is a point of great concern; but I think that will not be said: and all that has been ever said in any case, touching dispensations, proves quite the contrary, and asserts what I affirm. For why should any man go about to argue, that the king may dispense with this or that particular law, if at once he can dispense

with all the law, by an undoubted prerogative? This is a point of law which we insist upon, and are ready to argue with them; but we will go on with the rest of those things that we have offered: and first, we will read the Act of Uniformity, made 1 Eliz. that clause of it where they are so strictly charged to see the execution of that law.

This act, my lord, by the Act of Uniformity, made in the beginning of the late king's reign, is revived, with all the clauses in it relating to this matter. If then this be a duty incumbent upon them, and their oaths require it of them; and if they find that the pleasure of the king, in his declaration, is that which is not consonant to this law, what can they do?

Can any thing be more humble, or done with a more Christian mind, than by way of petition, to inform the king in the matter? For I never thought it, nor hath it ever, sure, been thought by any body else, to be a crime to petition the king: for the king may be mistaken in the law, so our books say; and we, every day, in Westminster-hall, argue against the king's grants, and say, he is deceived in his grants. It is the great benefit and liberty which the king gives to his subjects, to argue the legality or illegality of his grants.

My lord, when all this is done, to make this to be a libel, by putting in the words malicious, seditious, scandalous, and with an intent to raise sedition, would be pretty hard. My lord, we pray that clause of the statute may be read.

Sol. Gen. What for?

Mr. Pollexfen. It is a general law, and therefore the court will take notice of it; and we pray the jury may hear it read.

Sol. Gen. I agree it to be as Mr. Pollexfen has opened; and I agree it to be as sir Robert Sawyer has opened it.

Serj. Pemberton. My lord, we shall put it upon a short point. My lords the bishops are here accused of a crime of a very heinous nature as can be; they are here branded and stigmatized by this information, as if they were seditious libellers; when, my lord, it will in truth fall out, that they have done no more than their duty; their duty to God, their duty to the king, and their duty to the church.

For in this case, that which we humbly offer to your lordship (and insist upon it, as very very plain) is this; That the kings of England have no power to suspend or dispense with the laws and statutes of the kingdom, that establish religion: that is it which we stand upon for our defence. And we say, that such a dispensing power with laws and statutes, is a thing that strikes at the very foundation of all the rights, liberties, and properties of the king's subjects whatsoever. If the king may suspend the laws of the land which concern our religion, I am sure there is no other law but he may suspend: and if the king may suspend all the laws of the kingdom, what a condition are all the subjects in, for their lives, liberties, and properties? All at mercy.

My lord, the king's legal prerogatives are as

much for the advantage of his subjects as of himself; and no man goes about to speak against them: but, under pretence of legal prerogatives, to extend the power of the king to support a prerogative that tends to the destruction of all his subjects, their religion and liberties; in that, I think, they do the king no service, who go about to do it.

But now we say, with your lordship's favour, that these laws are the great bulwark of the reformed religion; they are, in truth, that which fenceth the religion and church of England, and we have no other human fence besides. They were made upon a foresight of the mischief that had, and might come, by false religions in this kingdom; and they were intended to defend the nation against them, and to keep them out; particularly to keep out the Romish religion, which is the very worst of all religions, from prevailing among us; and that is the very design of the act for the tests, which is intituled, 'An Act to prevent dangers that may happen from Popish Recusants.'

My lord, if this declaration should take effect, what would be the end of it? All religions are let in, let them be what they will; Ranters, Quakers, and the like; nay, even the Roman Catholic religion, as they call it, which was intended, by these acts of parliament, and by the Act of Uniformity, and several other acts, to be kept out of this nation, as a religion no way tolerable, nor to be endured here.

If this declaration takes effect, that religion will stand upon the same terms with the Protestant religion. Suspend those laws, and that Romish religion, that was intended to be prohibited, and so much care was taken, and so many statutes made to prohibit it, will come in; and all this care, and all those statutes go for nothing. This one declaration sets them all out of doors; and then that religion stands upon equal terms with the established religion.

My lord, we say this farther, that my lords the bishops have the care of the church, by their very function and offices; and are bound to take care to keep out all those false religions that are prohibited, and designed to be kept out by the law. My lords the bishops finding this declaration founded upon a mere pretended power, that had been continually opposed and rejected in parliament, could not comply with the king's command to read it.

My lord, such a power to dispense with or suspend the laws of a nation, cannot with any shadow of reason be. It is not long since, that such a power was ever pretended to by any, but such as have the legislative too; for it is plain, that such a power must at least be equal to the power that made the laws. To dispense with a law must argue a power greater, or at least as great as that which made the law.

My lord, it has been often said in our books, That where the king's subjects are concerned in interest, the king cannot suspend or dispense with a particular law. But, my lord, how can the king's subjects be more concerned in interest, than when their religion lies at stake?

It has been resolved, upon the statute of Simony, that where the statute has disabled the party to take, there the king could not enable him against that act of parliament: and shall it be said, that by his dispensation he shall enable one to hold an office who is disabled by the Test Act?

My lord, we say, the course of our law allows no such dispensation as the declaration pretends to: and he that is but meanly read in our law, must needs understand this, That the kings of England cannot suspend our laws; for that would be to set aside the law of the kingdom; and then we might be clearly without any laws, if the king should please to suspend them.

'Tis true, we say, the last king Charles was prevailed upon, by misinformation, to make a dispensation somewhat of the nature of this, though not so full an one; for that dispensed only with some few ceremonies, and things of that nature: but the House of Commons (this taking air) in 1662, represent this to the king by a petition. And what is it that they do represent? That he, by his dispensation, has undertaken to do that which nothing but an act of parliament can do; that is, the dispensing with penal laws, which is only to be done by act of parliament. And thereupon it was thought fit, upon the king's account, to bring in an act for it in some cases.

My lord, the king did then, in his Speech to the parliament, (which we use as a great argument against this dispensing power) say this, "That considering the circumstances of the nation, he could wish with all his heart, that he had such a power to dispense with some laws, in some particulars." And thereupon there was a bill, in order to an act of parliament, brought in, giving the king a power to dispense; but, my lord, with a great many qualifications: which shews plainly, that it was taken by the parliament, that he had no power to dispense with the laws of himself.

My lord, afterwards in 1672, the king was prevailed upon again to grant another dispensation somewhat larger——

L. C. J. Brother Pemberton, I would not interrupt you, but we have heard of this over and over again already.

Serj. Pemberton. Then since your lordship is satisfied of all these things, as I presume you are, else I should have gone on, I have done, my lord.

Serj. Levinz. But, my lord, we shall go a little higher than that, and shew that it has been taken all along as the antient law of England, that such dispensations ought to be by the king and the parliament, and not by the king alone.

Sol. Gen. My lord, if you will admit every one of the counsel to speech it before they give their evidence, when shall we come to an end of this cause? We shall be here till midnight.

L. C. J. They have no mind to have an end of the cause, for they have kept it three hours longer than they need to have done.

Serj. Pemberton. My lord this case does require a great deal of patience.

L. C. J. It does so, brother; and the court has had a great deal of patience: but we must not sit here only to hear speeches.

Att. Gen. Now after all their speeches of two hours long, let them read any thing, if they have it.

Sir R. Sawyer. We will begin with the Record of Richard the 2nd—Call William Fisher.

Wm. Fisher, Clerk to Mr. Ince, sworn.

L. C. J. What do you ask him?

Sir R. Sawyer. Shew him that copy of the Record.—[The Record was then shewn him.]

L. C. J. Where had you those, Sir?

Mr. Fisher. Among the Records in the Tower.

L. C. J. Are they true copies?

Fisher. Yes, my lord.

L. C. J. Did you examine them by the Record?—*Fisher.* Yes, my lord.

Sir R. Sawyer. Then hand them in; put them in.

Clerk reads. 'Ex Rotulo Parlamenti de Anno Regni Regis Richardi Secundi 15 N. 1.'—My lord, it is written in French, and I shall make but a bad reading of it.

Sir S. Astry. Where is the man that examined it?—Do you understand French?

Fisher. Yes, my lord.

Sir R. Sawyer. The Record is in another hand than this; they may easily read it.

Sol. Gen. Who copied this paper?

Fisher. I did examine it.

Sol. Gen. What did you examine it with?

Fisher. I looked upon that copy, and Mr. Halstead read the record.

L. C. J. Young man, read out.

Fisher reads. 'Vendredy Lendemain del Almes qu'estoit le premier jour.'—

Sol. Gen. Pray tell us what it is you would have read?

Serj. Levinz. I'll tell you what it is, Mr. Solicitor: it is the dispensation with the statute of provisors: and the act of parliament does give the king a power to dispense till such a time.

Sol. Gen. Don't you think the king's prerogative is affirmed by many acts of parliament?

Serj. Levinz. If the king could dispense without an act of parliament, what need was there for the making of it?

Sol. Gen. Mr. Serjeant, we are not to argue with you about that yet.

L. C. J. Read it in English for the jury to understand it.

Fisher. My lord, I cannot undertake to read it so readily in English.

Just. Powell. Why don't you produce the Records that are mentioned in the petition, those in king Charles the 2nd's time?

Serj. Levinz. We will produce our records in order of time, as they are.

Sir Samuel Astry. There is the clerk of the Records of the Tower, Mr. Halstead, will read it very well in French or English.

[Then Mr. Halstead was sworn to interpret the Record into English, according to the best of his skill and knowledge; but not reading very readily—a true copy of the Record in English follows, out of the rolls of parliament, in the 15th year of king Richard the second, No. 1.]

‘Friday, the morrow of All-Souls, which was the first day of this parliament, holden at Westminster, in the 15th year of the reign of our lord king Richard the 2nd, after the conquest, the reverend father in God the archbishop of York, primate and chancellor of England, by the king’s commandment, being present in parliament, pronounced and declared very nobly and wisely, the cause of the summons of this parliament, and said, first, That the king would, that holy church principally, and afterwards the lords spiritual and temporal, and also the cities and boroughs, should have and enjoy their liberties and franchises as well as they had them, and enjoyed them, in the time of his noble progenitors, kings of England; and also in his own time. And afterwards said, the summons of this parliament was principally for three occasions. The first occasion was, to ordain how the peace and quiet of the land, which have heretofore been greatly blemished and disturbed, as well by detraction and maintenance as otherwise, might be better holden and kept, and the laws better executed, and the king’s commands better obeyed. The second occasion was, to ordain and see how the price of wools, which is beyond measure lessened and impaired, might be better amended and enhanced. And also, that in case the war should begin again, at the end of the present truce, to wit, at the assumption of our lady next coming, to ordain and see, how and whereby the said war may be maintained at the least charge of the people. And the third occasion was, touching the statutes of provisors, to ordain and see how our holy father might have that which to him belongs, and the king that which belongs to him, and his crown; according unto that, Render unto Cæsar the things that are Cæsar’s, and unto God the things which are God’s.’

[Then the other Record of Richard the 2nd was read as follows, out of the rolls of parliament, the 15th year of king Richard the 2d, No. 8.]

‘Be it remembered, touching the statute of provisors, that the Commons, for the great confidence which they have in the person of our lord the king, and in his most excellent knowledge, and in the great tenderness which he hath for his crown, and the rights thereof; and also, in the noble and high discretions of the lords, have assented, in full parliament, that our said lord the king, by advice and assent of the said lords, may make such sufferance, touching the said statute, as shall seem to him reasonable and profitable, until the next

parliament, so as the said statute be not repealed in no article thereof; and that all those who have any benefices by force of the said statute, before this present parliament; and also, that all those to whom any aid, tranquillity, or advantage is accrued, by virtue of the said statute of the benefices of holy church (of which they were heretofore in possession) as well by presentation, or collation of our lord the king, as of the ordinaries, or religious persons whatsoever, or by any other manner or way whatsoever, may freely have and enjoy them, and peaceably continue their possession thereof, without being ousted thereof, or any ways challenged, hindred, molested, disquieted, or grieved hereafter, by any provisors or others against the form and effect of the statute aforesaid, by reason of the said sufferance in any time to come. And moreover, that the said Commons may disagree at the next parliament to this sufferance, and fully resort to the said statute, if it shall seem good to them to do it: with protestation, that this assent, which is a novelty, and has not been done before this time, be not drawn into example or consequence for time to come. And they prayed our lord the king, that the protestation might be entered of record in the roll of the parliament; and the king granted, and commanded to do it.’

Serj. Levinz. Now, my lord, we will go on—This was in Richard the second’s time: and a power is given by the Commons to the king, with the assent of the Lords, to dispense, but only to the next parliament, with a power reserved to the Commons; and to disagree to it, and retract that consent of theirs the next parliament.

Sir George Treby. The statute of provisors was and is a penal law, and concerning ecclesiastical matters too; viz. The collating and presenting to archbishopricks, bishopricks, benefices, and dignities of the church: and in this record now read, the parliament give the king a limited power, and for the short time, to dispense with that statute. But, to obviate all pretence of such a power’s being inherent in the crown, as a prerogative, they declare, (1.) That it was a novelty; that is as much as to say, that the king had no such power before. (2.) That it should not be drawn into example; that is to say, that he should have no such power for the future.

Serj. Levinz. Now we will go on to the records mentioned in the petition; those in the last king’s time, in 1662, and 1672; and that in this king’s time, in 1685.—Where is the Journal of the House of Lords?

Mr. Walker sworn.

L. C. J. Is that the book of the House of Lords?

Mr. Walker. It is the Journal of the House of Lords.

L. C. J. Is it kept by you?

Mr. Walker. Yes, my lord.

L. C. J. Where is it kept?

Mr. Walker. In the usual place, here in Westminster.

Sol. Gen. What is that?

Serj. Levinz. It is the Journal of the House of Lords.—But, my lord, there is one thing that is mentioned in the last record that was read, which is worth your lordship's and the jury's observation; that it is declared a novelty, and a protestation, that it should not be drawn into precedent for the future.

L. C. J. That has been observed, brother: let us hear your record read.

Clerk reads.—'Die Mercurii, 13 die Februarii, 1662.

'His majesty was present this day, sitting in the regal crown and robes, the peers being likewise in their robes: the king gave order to the gentleman usher of the Black Rod, to signify to the House of Commons his pleasure, that they presently come up, and attend his majesty, with their speaker; who being present, his majesty made this speech following.

'My Lords and Gentlemen;

'I am very glad to meet you here again, having thought the time long since we parted, and often wished you had been together, to help me in some occasions which have fallen out: I need not repeat them unto you, you have all had the noise of them in your several countries; and, God be thanked, they were but noise, without any worse effects.

'To cure the distempers, and compose the differing minds that are yet amongst us, I set forth my declaration of the 26th of December. In which you may see, I am willing to set bounds to the hopes of some, and to the fears of others; of which when you shall have examined well the grounds, I doubt not but I shall have your concurrence therein. The truth is, I am in my nature an enemy to all severity for religion and conscience, how mistaken soever it be, when it extends to capital and sanguinary punishments; which I am told, were began in popish times. Therefore, when I say this, I hope I shall not need to warn any here, not to infer from thence that I mean to favour popery. I must confess to you, there are many of that profession, who, having served my father and myself very well, may fairly hope for some part in that indulgence I would willingly afford to others who dissent from us. But let me explain myself, lest some mistake me herein, as I heard they did in my declaration. I am far from meaning by this a toleration, or qualifying them thereby to hold any offices or places of trust in the government. Nay, further, I desire some laws may be made to hinder the growth and progress of their doctrine.

'I hope you have all so good an opinion of my zeal for the Protestant religion, as I need not tell you, I will not yield to any therein, not to the bishops themselves, nor in my liking the uniformity of it, as it is now established;

'which being the standard of our religion, must be kept pure and uncorrupted, free from all other mixtures. And yet, if the dissenters will demean themselves peaceably and modestly under the government, I could heartily wish I had such a power of indulgence to use upon occasion.'—

Sir George Treby. Pray, Sir, read that out distinctly.

Clerk reads.—'I could heartily wish I had such a power of indulgence to use upon occasion, as might not needlessly force them out of the kingdom; or, staying here, give them cause to conspire against the peace of it.

'My Lords and Gentlemen;

'It would look like flattering in me, to tell you in what degree I am confident of your wisdom and affection in all things that relate to the greatness and prosperity of the kingdom. If you consider well what is best for us all, I dare say we shall not disagree. I have no more to say to you at present, but, once again, to bid you heartily welcome.'

Mr. Finch. The next thing we shall shew you is, that after the king had made this speech, and wished he had such a power of indulgence to use upon occasion, there was a Bill in the House of Lords brought in, to enable the king to dispense with several laws: we shall shew you the Journal, where it was read and committed; but further than that it went not.

L. C. J. What use do you make of this, Mr. Finch?

Sir Robert Sawyer. You may easily apprehend the use we shall make of it. (The king, in his speech, says, 'He wished he had such a power'); the House of Lords thought he had not; and therefore they ordered a Bill to be brought in, to enable him.—Read the Journal of the Lords of the 13th of March, 1662.

Clerk reads. 'Die Veneris, 13 die Martii, 1662.

'After some debate, whether the House should be put into a grand committee, for the further debate of the Bill concerning his majesty's power in ecclesiastical affairs, it was put to the question; viz.

'As many of your lordships as would have this House adjourned, and put into a committee to consider of the said Bill, say, Content; others, Not Content.

'Passed in the affirmative.

'And then the lord chamberlain of the household was directed to take the chair, as formerly; which he did accordingly.

'And after debate, the House was resumed, after the grand committee had appointed a sub-committee, touching the said Bill.'

Sir Robert Sawyer. This is all in the Journal of the House of Lords about this matter.—We will now shew you the Bill itself.

Clerk reads. 'An Act concerning his majesty's power in ecclesiastical affairs.

'Whereas divers of his majesty's subjects,

‘ through error of judgment, and misguided
 ‘ consciences (whereunto the licentiousness of
 ‘ these late unhappy times have much con-
 ‘ tributed) do not conform themselves to the
 ‘ order of divine worship and service esta-
 ‘ blished by law; and though his majesty and
 ‘ both houses of parliament are fully satisfied,
 ‘ that those scruples of conscience, from
 ‘ whence this non-conformity ariseth, are ill
 ‘ grounded; and that the government of the
 ‘ church, with the service thereof, (as now
 ‘ established) is the best that is any where ex-
 ‘ tant, and most effectual to the preservation of
 ‘ the Protestant religion; yet hoping that cle-
 ‘ mency and indulgence may, in time, wear
 ‘ out those prejudices, and reduce the dis-
 ‘ senters to the unity of the church; and con-
 ‘ sidering that this indulgence, how necessary
 ‘ soever, cannot be dispensed by any certain
 ‘ rule, but must vary, according to the cir-
 ‘ cumstances of time, and the temper and prin-
 ‘ ciples of those to whom it is to be granted;
 ‘ and his majesty being the best judge when,
 ‘ and to whom this indulgence is to be dis-
 ‘ pensed, or as may be most consistent with
 ‘ the public peace, and without just cause of
 ‘ offence to others; and to the end his majesty
 ‘ may be enabled to exercise it with universal
 ‘ satisfaction, Be it enacted by the king’s most
 ‘ excellent majesty, by advice, and with the
 ‘ consent of the lords spiritual and temporal,
 ‘ and commons, in this present parliament as-
 ‘ sembled, and by the authority thereof, that
 ‘ the king’s majesty may, by letters patents
 ‘ under the great seal, or by such other ways
 ‘ as to his majesty shall seem meet, dispense
 ‘ with one act, or law, made the last session
 ‘ of this present parliament (intituled, An Act
 ‘ for the Uniformity of public prayers, and ad-
 ‘ ministration of the Sacraments, and other
 ‘ rites and ceremonies; and for establishing
 ‘ the form of making, and ordaining, and con-
 ‘ secrating bishops, priests and deacons, in the
 ‘ Church of England) and with any other
 ‘ laws or statutes concerning the same; or re-
 ‘ quiring oaths, or subscriptions; or which do
 ‘ enjoin conformity to the order, discipline, and
 ‘ worship established in this church, and the
 ‘ penalties in the said laws imposed, or any of
 ‘ them: and may grant licences to such of his
 ‘ majesty’s subjects of the Protestant religion,
 ‘ of whose inoffensive and peaceable disposition
 ‘ his majesty shall be persuaded, to enjoy and
 ‘ use the exercise of their religion and worship,
 ‘ though differing from the public rule (the said
 ‘ laws and statutes, or any disabilities incapa-
 ‘ cities, or penalties, in them, or any of them
 ‘ contained, or any matter or thing to the con-
 ‘ trary thereof notwithstanding.)

‘ Provided always, and be it enacted, That
 ‘ no such indulgence, licence, or dispensation
 ‘ hereby to be granted, shall extend, or be con-
 ‘ strued to extend to the tolerating, or permit-
 ‘ ting the use or exercise of the Popish, or
 ‘ Roman Catholic religion in this kingdom;
 ‘ nor to enable any person or persons to hold or
 ‘ exercise any place or office of public trust

‘ within this kingdom; who, at the beginning
 ‘ of this present parliament were, by the laws
 ‘ and statutes of this realm, disenabled there-
 ‘ unto; nor to exempt any person or persons
 ‘ from such penalties as are by law to be in-
 ‘ flicted upon such as shall publish or preach any
 ‘ thing to the depravation or derogation of the
 ‘ book of Common-Prayer, or the government,
 ‘ order and ceremonies of the church established
 ‘ by law.

‘ Provided also, and be it enacted, That no
 ‘ such licence or dispensation shall extend to
 ‘ make any priest or minister capable of any
 ‘ ecclesiastical living or benefice, with cure,
 ‘ who shall not, before the archbishop of the
 ‘ province, or bishop of the diocese where he
 ‘ lives, make such subscription to the articles
 ‘ of religion, as is enjoined by the statute of the
 ‘ 13th of Elizabeth, made for reformation of
 ‘ disorders in the church; nor shall extend, or
 ‘ be construed to extend to dispense with the
 ‘ book of Common Prayer: but that the said
 ‘ book shall be constantly read in all the cathe-
 ‘ dral and collegiate churches, and in all the
 ‘ parish churches, and public chapels.’

Sir Rob. Sawyer. Here your lordship sees
 what the Lords did in this matter.—We shall
 now shew you, out of the Commons Journal,
 what they did concerning this speech of the
 King—Shew the Journal of the 25th of Fe-
 bruary, 1662.

Mr. Jodrell sworn.

L. C. J. Did you examine that, Mr. Jodrell?

Mr. Jodrell. It is the original book. [The
 book delivered into the court.]

Clerk reads. ‘ Die Mercurii 25. die Fe-
 ‘ bruarii, 15 Car. 2. Resolved, That it be
 ‘ presented—

Sir Rob. Sawyer. You must begin above
 —‘ The House then took into debate—

Clerk reads. ‘ The House then took into
 ‘ debate the matter touching indulgence to
 ‘ dissenters, from the act of uniformity.

‘ The question being put, that the present
 ‘ debate be adjourned till to-morrow morning,
 ‘ the House was divided; the Yeas went out.

‘ Sir John Goodrick, and sir William Lowther,
 ‘ tellers for the Noes; with the Noes 161.

‘ Sir Richard Temple, and sir John Talbot,
 ‘ tellers for the Yeas; with the Yeas 119.

‘ And so it passed in the negative.

‘ Resolved, &c. That it be presented to the
 ‘ King’s Majesty, as the humble advice of this
 ‘ House, That no indulgence be granted to the
 ‘ dissenters, from the act of uniformity—

Sol. Gen. Does your lordship think it to be
 evidence?

L. C. J. Let them read it, Mr. Solicitor,
 that we may hear what it is.

Clerk reads on.

‘ Ordered, That a Committee be appointed to
 ‘ collect and bring in the reasons of this House
 ‘ for this vote, upon the present debate; to be
 ‘ presented to his Majesty, and that the nomi-
 ‘ nating of the Committee be adjourned till to-
 ‘ morrow morning.’

Sir Rob. Sawyer. That's all.

Sol. Gen. Pray, if there be any thing more, read on; you shall not parcel out a record, and take and leave what you will.

Mr. Finch. Did not you parcel out our Petition?

Sol. Gen. Read on, if there be any thing about this matter.

Clerk. That is all.

Sir Rob. Sawyer. Turn to the 27th of February, 1662.

Clerk reads. 'Veneris, 27. Februarii, 15 Car. 2.

'Sir Heneage Finch reports from the Committee appointed to collect and bring in the reasons of the House for their vote of advice to the King's Majesty; and in the close of those reasons to add, That the House will assist his Majesty with their lives and fortunes: and to pen an address to his Majesty for that purpose, the several reasons and address agreed to by the Committee in writing, he read in his place, and did bring up, and deliver the same in at the clerk's table.

'The first paragraph was read, and upon the question agreed to.

'The second paragraph was read, and upon the question agreed to.

'The third was read, and upon the question agreed to.'

Sir Rob. Sawyer. Go over that, and go to the Address itself.

Clerk reads. 'May it please your most excellent Majesty; We your Majesty's most dutiful and loyal subjects, the knights, citizens, and burgesses of the House of Commons in parliament assembled, having with all fidelity and obedience considered of the several matters comprized in your Majesty's late gracious declaration of the 26th of December last, and your most gracious speech at the beginning of this present session, do in the first place for ourselves, and in the names of all the Commons of England, render unto your sacred Majesty the tribute of our most hearty thanks for that infinite grace and goodness wherewith your Majesty hath been pleased to publish your royal intention of adhering to your act of indemnity and oblivion, by a constant and religious observance of it; and our hearts are further enlarged in these returns of thanksgiving, when we consider your Majesty's most princely and heroic profession relying upon the affections of your people, and the abhorring all sorts of military and arbitrary rule; but above all, we can never enough remember, to the honour of your Majesty's piety, and our own unspeakable comfort, those solemn and most endearing invitations of your Majesty's subjects, to prepare laws to be presented to your Majesty against the growth and increase of Popery; and withal, to provide more laws against licentiousness and impiety, at the same time declaring your own resolutions for maintaining the act of uniformity: and it becomes us always to acknowledge and admire your

Majesty's wisdom in this your declaration, whereby your Majesty is pleased to resolve not only by sumptuary laws, but by your own royal example of frugality, to restrain that excess in men's expences, which is grown so general and so exorbitant, and to direct our endeavours to find out fit and proper laws for the advancement of trade and commerce.

'After all this, we most humbly beseech your Majesty to believe, that it is with extreme unwillingness and reluctance of heart, that we are brought to differ from any thing which your Majesty hath thought fit to propose; and though we do no ways doubt but that the unreasonable distempers of men's spirits, and the many mutinies and conspiracies which were carried on during the late intervals of parliament, did reasonably incline your Majesty to endeavour by your declaration to give some alloy to those ill humours, till the parliament assembled, and the hopes of an indulgence, if the parliament should consent to it; especially seeing the pretenders to this indulgence did seem to make some title to it by virtue of your Majesty's Declaration from Bredah: nevertheless, we your Majesty's most dutiful and loyal subjects, who are now returned to serve in parliament, from those several parts and places of your kingdom for which we are chosen, do humbly offer it to your Majesty's great wisdom, that it is in no sort adviseable that there be any indulgence to such persons who presume to dissent from the act of uniformity and religion established, for these reasons.

'We have considered the nature of your majesty's declaration from Bredah, and are humbly of opinion, That your majesty ought not to be pressed any further.

'Because it is not a promise in itself, but only a gracious declaration of your majesty's intentions to do what in you lay, and what a parliament should advise your majesty to do, and no such advice was ever given, or thought fit to be offered; nor could it be otherwise understood, because there were laws of uniformity then in being, which could not be dispensed with but by act of parliament.'

Sir R. Sawyer. This is all that we read this for; your lordship and the jury see what is here declared by the parliament, That the act of uniformity could not be dispensed with, without an act of parliament.

Next, my lord, we shall shew you what was done in the year 1672.—Read the king's speech the 5th of February, 1672.

[The Journals of the Lords House were delivered in.]

Clerk reads. 'Die Mercurij, 5 Februarij, 1672.

'My lords and gentlemen;

'I am glad to see you here this day. I would have called you sooner together, but that I was willing to ease you and the country, till there were an absolute necessity.

'Since you were last here, I have been

‘ forced to a most important, necessary, and expensive war; and I make no doubt but you will give me suitable and effectual assistance to go through with it. I refer you to my declaration for the causes, and indeed the necessity of this war, and shall now only tell you, That I might have digested the indignities to my own person, rather than have brought it to this extremity, if the interest, as well as the honour of the whole kingdom had not been at stake; and if I had omitted this conjuncture, perhaps I had not again ever met with the like advantage.

‘ You will find that the last supply that you gave me, did not answer expectation for the ends you gave it, the payments of my debts; therefore I must in the next place recommend them again to your special care.

‘ Some few days before I declared the war, I put forth my declaration for indulgence to dissenters, and have hitherto found a good effect of it, by securing my peace at home, when I had war abroad: there is one part in it that has been subject to misconstructions, which is that concerning the papists, as if more liberty was granted to them than to other recusants, when ’tis plain there is less; for the others have public places allowed them, and I never intended that they should have any, but only have the freedom of their religion in their own houses, without any concurrence of others; and I could not grant them less than this, when I had extended so much more grace to others, most of them having been loyal, and in the service of me, and the king my father: and in the whole course of this indulgence I do not intend that it shall any way prejudice the church, but I will support its rights, and it in its full power.

‘ Having said this, I shall take it very ill to receive contradiction in what I have done; and I will deal plainly with you, I am resolved to stick to my declaration.

‘ There is one jealousy more which is maliciously spread abroad, and yet so weak and frivolous, that I once thought it not of moment enough to mention; but it may have gotten some ground with some well-minded people, and that is, that the forces which I have raised in this war were designed to controul law and property. I wish I had had more forces the last summer; the want of them then, convinces me, I must raise more against this next spring; and I do not doubt but you will consider the charge of them in your supplies.

‘ I will conclude with this assurance to you, That I will preserve the true reformed protestant religion, and the church, as it is now established in this kingdom, and that no man’s property or liberty shall ever be invaded. I leave the rest to the chancellor.’

Serj. *Pemberton*. Now go to the Journal of the Commons of the 14th of February, 1672.

[The Journal put in.]

Clerk reads. ‘ Veneris 13, die Februarij, 1672.

‘ Mr. Powle reports from the committee appointed to prepare and draw up a petition and address to his majesty, the said petition and address, which he read in his place, and afterwards delivered the same in at the clerk’s table, and the same being again twice read, is as followeth, viz.

‘ Most gracious sovereign;

‘ We your majesty’s most loyal and faithful subjects, the commons assembled in parliament, do in the first place, as in all duty bound, return your majesty our most humble and hearty thanks for the many gracious promises and assurances which your majesty has several times, during this present parliament, given to us, that your majesty would secure and maintain unto us the true reformed protestant religion, our liberties and properties; which most gracious assurances your majesty, out of your great goodness, has been pleased to renew unto us, more particularly at the opening of this present session of parliament.

‘ And further, we crave leave humbly to represent, that we have, with all duty and expedition, taken into consideration the several parts of your majesty’s last speech to us; and withal, the declaration therein mentioned for indulgence to dissenters, dated the 15th of March last: and we find ourselves bound in duty to inform your majesty, that penal statutes, in matters ecclesiastical, cannot be suspended but by act of parliament.

‘ We therefore, the knights, citizens, and burgesses of your majesty’s house of commons, do most humbly beseech your majesty, That the said laws may have their free course, until it shall be otherwise provided for by act of parliament: and that your majesty would graciously be pleased to give such directions herein, that no apprehensions or jealousies may remain in the hearts of your majesty’s good and faithful subjects.

‘ Resolved, &c.

‘ That this house doth agree with the committee in the petition and address by them drawn up to be presented to his majesty.’

Sir *R. Sawyer*. Now turn to the 24th of February, 1672, in the same book.

Clerk reads. ‘ Lunæ, 24 Februarij, 1672.

‘ Mr. Secretary Coventry reports and presents in writing from his majesty, his Answer to the humble Petition and Address of this House, which was thrice read, and the matter debated, and is as followeth; viz.

‘ CHARLES R.

‘ His majesty hath received an address from you, and he hath seriously considered of it, and returns you this answer, That he is very much troubled, that that declaration which he put out for ends so necessary for the quiet of his kingdom, and especially in that conjuncture, should have proved the cause of disquiet in his House of Commons,

‘ and give occasion to the questioning of his
 ‘ power in ecclesiastics, which he finds not done
 ‘ in the reigns of any of his ancestors. He is
 ‘ sure he never had thoughts of using it other-
 ‘ wise than as it hath been entrusted in him, to
 ‘ the peace and establishment of the Church
 ‘ of England, and the ease of all his subjects in
 ‘ general; neither does he pretend to the right
 ‘ of suspending any laws, wherein the pro-
 ‘ perties, rights, or liberties of any of his sub-
 ‘ jects are concerned, nor to alter any thing in
 ‘ the established doctrine or discipline of the
 ‘ Church of England. But his only design in
 ‘ this, was to take off the penalties the statutes
 ‘ inflicted upon dissenters, which he believes,
 ‘ when well considered of, you yourselves
 ‘ would not wish executed according to the ri-
 ‘ gor and letter of the law; neither hath he
 ‘ done this with any thought of avoiding or
 ‘ precluding the advice of his parliament; and
 ‘ if any bill shall be offered, which shall appear
 ‘ more proper to attain the aforesaid ends, and
 ‘ secure the peace of the church and kingdom,
 ‘ when tendered in due manner to him, he will
 ‘ shew how readily he will concur in all ways
 ‘ that shall appear good for the kingdom.’

Sir R. Sawyer. Turn to the 26th of February, 1672.

Clerk reads. ‘ Die Mercurii, 26 Feb. 1672.

‘ Mr. Powle reports from the committee ap-
 ‘ pointed to consider of an answer to return to
 ‘ his majesty’s last message upon the debate of
 ‘ the House, an answer agreed by the com-
 ‘ mittee, and drawn up, and put into writing,
 ‘ which he read in his place, and then delivered
 ‘ the same in at the clerk’s table, where it was
 ‘ twice read, and is as followeth; viz.

‘ Most gracious Sovereign;

‘ We your majesty’s most humble and loyal
 ‘ subjects, the knights, citizens, and burgesses
 ‘ in this present parliament assembled, do ren-
 ‘ der to your most sacred majesty our most du-
 ‘ tiful thanks, for that, to our unspeakable com-
 ‘ fort, your majesty has been pleased so often
 ‘ to reiterate unto us those gracious promises
 ‘ and assurances of maintaining the religion
 ‘ now established, and the liberties and pro-
 ‘ perties of your people; and we do not in the
 ‘ least measure doubt but that your majesty
 ‘ had the same gracious intention in giving
 ‘ satisfaction to your subjects, by your answer
 ‘ to our last petition and address: yet, upon a
 ‘ serious consideration thereof, we find that
 ‘ the said answer is not sufficient to clear the
 ‘ apprehensions that may justly remain in the
 ‘ minds of your people, by your majesty’s hav-
 ‘ ing claimed a power to suspend penal statutes
 ‘ in matters ecclesiastical, and which your ma-
 ‘ jesty does still seem to assert, in the said an-
 ‘ swer, to be entrusted in the crown, and never
 ‘ questioned in the reigns of any of your an-
 ‘ cestors: wherein we humbly conceive your
 ‘ majesty has been very much misinformed;
 ‘ since no such power ever was claimed or ex-
 ‘ ercised by any of your majesty’s predecessors;
 ‘ and if it should be admitted, might tend to the
 ‘ interrupting the free course of the laws, and

VOL. XII.

‘ altering the legislative power, which hath al-
 ‘ ways been acknowledged to reside in your
 ‘ two houses of parliament.

‘ We therefore, with an unanimous consent,
 ‘ become again most humble suitors unto your
 ‘ sacred majesty, That you would be pleased
 ‘ to give us a full and satisfactory answer to
 ‘ our said petition and address, and that your
 ‘ majesty would take such effectual order, that
 ‘ the proceedings in this matter may not for
 ‘ the future be drawn into consequence or ex-
 ‘ ample.

‘ The answer to his majesty’s message was
 ‘ again read by paragraphs, and the several pa-
 ‘ ragraphs to the last were, upon the question,
 ‘ severally agreed.

‘ The last paragraph being read, and the
 ‘ question being put, that the word ‘ unanimous’
 ‘ should stand in the paragraph,

‘ The House divided:—The Noes go out.

‘ Tellers. Lord St. John and Mr. Vaughan,
 ‘ for the Yeas, 180.

‘ Sir Richard Temple and sir Philip Howard,
 ‘ for the Noes, 77. And so it was resolved in
 ‘ the affirmative.

‘ The question being put to agree to the pa-
 ‘ ragraph, it was resolved in the affirmative.

‘ Resolved, &c.

‘ That the whole Address be agreed to, as it
 ‘ was brought in by the committee.’

Sir Robert Sawyer. Now turn to the Lords’
 Journal, and there your lordship will see, that
 the king does communicate this Address to the
 Lords, and desires their advice. Read the 1st
 of March, 1672.

Clerk reads. ‘ Die Sabbati primo die Martii,
 ‘ 1672.

‘ His Majesty this day made a short speech,
 ‘ as follows:

‘ My Lords;

‘ You know, that at the opening of this ses-
 ‘ sion, I spoke here to your satisfaction; it has
 ‘ notwithstanding begotten a greater disquiet in
 ‘ the House of Commons than I could have
 ‘ imagined.

‘ I received an address from them, which I
 ‘ looked not for, and I made them an answer
 ‘ that ought to have contented them; but on the
 ‘ contrary, they have made me a reply of such
 ‘ a nature, that I cannot think fit to proceed
 ‘ any further in this matter without your advice.

‘ I have commanded the Chancellor to ac-
 ‘ quaint you with all the transactions, wherein
 ‘ you will find both me and yourselves highly
 ‘ concerned. I am sensible for what relates to
 ‘ me, and I assure you, my Lords, I am not
 ‘ less so for the privilege and the honour of
 ‘ this House.

‘ Afterwards the Lord Chancellor read the
 ‘ several papers and addresses of the House of
 ‘ Commons, and his Majesty’s answer there-
 ‘ unto, and opened his Majesty’s proceedings
 ‘ upon them.

The Address of the House of Commons was
 read.

Sir Rob. Sawyer. Pass over that, you have
 read it already.

Clerk reads. 'The next, his Majesty's Answer to the Address of the House of Commons, was read as follows,——'

Sir Rob. Sawyer. That hath been read too.

Clerk reads. 'Then was read the reply of the House of Commons to his Majesty's Answer, as followeth,——'

Mr. Finch. You have read that likewise.

Clerk reads. 'Upon this it is ordered, that the Lord Treasurer, duke of Buckingham, earl of Bridgwater, earl of Northampton, earl of Bristol, earl of Berks, earl of Bolingbroke, and the earl of Anglesey, do forthwith withdraw, and consider what humble thanks is fit to be given to his Majesty for his great favour in communicating this business to this House, and report the same. And accordingly, the said Lords Committees did withdraw themselves for that purpose.

'The Lords being returned, the duke of Buckingham reported what the Committee had prepared to present to his Majesty by way of thanks, which was read as followeth.

'We the Lords spiritual and temporal in parliament assembled, do unanimously present to your sacred Majesty our most humble thanks, for having been pleased to communicate to us what has passed between your Majesty and the House of Commons, whereby you have graciously offered us the means of shewing our duty to your Majesty, and of asserting the antient just rights and privileges of the House of Peers.

'The question being put, whether to agree with the Committee?

'It was resolved in the affirmative.

'Ordered, That his Majesty be desired, that his speech, and the papers read this day, may be entered into the Journal-book of this House.

'The lord treasurer, the duke of Buckingham, and the lord Chamberlain, are appointed to attend his Majesty presently, to know his pleasure, what time and place this whole House shall wait upon him, to present the humble thanks of this House for his great favour shewed this day.

'Ordered, That upon Monday morning next, this House will debate the whole matter of his Majesty's speech, and these papers; and to consider the points of privilege, and what else may arise thereupon.

'The lords that were appointed to attend his Majesty, return with this answer.

'That his Majesty has appointed this afternoon at five of the clock, for this House to wait upon him in the banquetting house, at Whitehall.

'Ordered, That all the judges now in town, shall attend this House on Monday morning next.'

Sir Rob. Sawyer. The third of March, 1672, is the next.

Clerk reads. 'Die Lunæ 3 die Martii, 1672.

'The Lord Chancellor reported, that the whole House on Saturday last waited upon

his Majesty at Whitehall, and presented the humble Address of this House, and his Majesty was pleased to return this Answer.

'My Lords;

'I take this Address of your's very kindly; I will always be very affectionate to you, and expect you should stand by me, as I will always by you.

'Then the House took into consideration the whole matter of his Majesty's speech on Saturday, and the three papers which his Majesty acquainted this House withal, and all the said papers in their order were read, and after a long debate, the question being put,

'Whether this House shall in the first place enter into consideration of giving advice to his Majesty?—It was resolved in the affirmative.

'It is ordered, that this business shall be taken into consideration to-morrow morning, at nine of the clock, the first business.

'Ordered, That the judges now in town, shall attend to-morrow morning.'

Sir Rob. Sawyer. The 4th of March, 1672.

Clerk reads. 'Next, the House took into consideration the advice to be given to his Majesty, concerning the Addresses made to him from the House of Commons.

'The Address of the House of Commons, and his Majesty's Answer were read, and after a long debate, the question being put, whether the King's Answer to the House of Commons, in referring the points now controverted to a parliamentary way by Bill, is good and gracious, that being a proper and natural course for satisfaction therein?

It was resolved in the affirmative.

Sir Rob. Sawyer. The 8th of March, 1672.

Clerk reads. 'Die Sabbati 8 die Martij, 1672.

'His Majesty on his royal throne, adorned with his crown and regal ornaments, commanded the gentleman usher of the black-rod to give notice to the House of Commons, that they attend his Majesty presently.

'The Commons being come with their speaker, his Majesty made this short speech following.

'My Lords and Gentlemen;

'Yesterday you presented me an address, as the best means for the satisfying and composing the minds of my subjects, to which I freely and readily agreed, and I shall take care to see it performed accordingly.

'I hope, on the other side, you gentlemen of the House of Commons will do your part; for I must put you in mind, it is near five weeks since I demanded a supply, and what you voted unanimously upon it, did both give life to my affairs at home, and dishearten mine enemies abroad; but the seeming delay it hath met withal since, hath made them to take new courage, and they are now preparing for this next summer a greater fleet, as they say, than ever they have had yet; so that if the supply be not very speedily dispatch'd, it will be altogether ineffectual, and the safety,

‘honour and interest of England must of necessity be exposed. Pray lay this to heart, and let not the fears and jealousies of some draw an inevitable ruin upon us all.

‘My Lords and Gentlemen;

‘If there be any scruple remaining with you concerning the suspension of penal laws, I here faithfully promise you, that what has been done in that particular, shall not for the future be drawn either into consequence or example. And as I daily expect from you a bill for my supply, so I assure you, I shall as willingly pass any other you shall offer me that may tend to the giving you satisfaction in all your just grievances.

‘Next my Lord Chancellor reported, That both Houses waited upon the King yesterday, and presented him with the Address against the growth of Popery, and his Majesty hath been pleased to return this answer.

‘My Lords and Gentlemen;

‘I do heartily agree with you in your Address, and shall give speedy order to have it put in execution. There is one part to which I believe it is not your intention that it should extend; for I can scarce say, those are in my pay that are presently to be employed abroad; but as for all other parts, I shall take care it shall be done as you desire.’

After which the Lord Chancellor said, he had somewhat more to impart to the House by the King’s command, which was,

‘That his Majesty last night, having spoken with several members of both Houses, found some dissatisfaction remaining concerning his answer to their address, in the particular of the officers to be employed abroad, of which number he had five or six that were of the best officers of France and Flanders, and being his own subjects, he had been very solicitous to get; but if that bred any umbrage, the king commanded him to let them know, that he resolves to give both his Houses full satisfaction to their desires.

‘There was another particular that the Lord Chancellor said he thought fit to acquaint them with, which, though it was by his Majesty’s leave, yet it was not by his command: however, he thought it his duty to acquaint the House with it (Mr. Secretary Coventry intending to acquaint the House of Commons with the same), That his Majesty had the last night, in pursuance of what he then intended, and declared this morning, concerning the suspension of Penal Laws not being for the future drawn either into consequence or example, caused the original declaration under the Great-Seal to be cancelled in his presence, whereof himself and several other lords of the council were witnesses.’

Sir Robert Sawyer. Turn to the 10th of March, 1672.

Clerk reads. ‘Die Lunæ decimo die Martij, 1672.

‘Ordered, That what my Lord Chancellor said on Saturday last, concerning his Majes-

ty’s causing the vacating his indulgence under the Great-Seal of England, shall be entered into the Journal-Book of this House, as on Saturday last.’

Sir Rob. Sawyer. We shall now come to that which passed in the parliament in 1685—Read the 9th of November, 1685. [The Journal of the Lords, 1685, put in.]

Clerk reads. ‘His Majesty being on his royal throne adorned with his regal robes and crown (the Lords being in their robes also) commanded the gentleman-usher to give notice to the House of Commons that they immediately attend his Majesty; who being come, his Majesty made the following speech.

‘My Lords and Gentlemen;

‘After the storm that seemed to be coming upon us when we parted last, I am glad to meet you all again in so great peace and quietness; God Almighty be praised, by whose blessing that rebellion was suppressed; but when I reflect what an inconsiderable number of men began it, and how long they carried it on without any opposition, I hope every body will be convinced that the militia, which hath hitherto been so much depended upon, is not sufficient for such occasions, and that there is nothing but a good force of well-disciplined troops in constant pay that can defend us from such as either at home or abroad are disposed to disturb us.

‘And in truth, my concern for the peace and quiet of my subjects, as well as for the safety of the government, make me think it necessary to increase the number to the proportion I have done. This I owed as well to the honour as to the security of the nation, whose reputation was so infinitely exposed unto all our neighbours, by having lain open to this late wretched attempt, that it is not to be repaired without keeping such a body of men on foot, that none may ever have the thoughts again of finding us so miserably unprovided.

‘It is for the support of this great charge, which is now more than double to what it was, that I ask your assistance, in giving me a supply answerable to the expence it brings along with it: and I cannot doubt, but what I have begun so much for the honour and defence of the government, will be continued by you with all the chearfulness and readiness that is requisite for a work of so great importance.

‘Let no man take exceptions that there are some officers in the army not qualified according to the late tests for their employments: the gentlemen, I must tell you, are most of them well known to me; and having formerly served with me on several occasions, and always approved the loyalty of their principles by their practices, I think them fit now to be employed under me; and will deal plainly with you, that after having had the benefit of their services in such time of need and danger, I will neither expose them to disgrace, nor myself to the want of them, if there should

‘be another rebellion to make them necessary to me.

‘I am afraid some men may be so wicked to hope and expect that a difference may happen between you and me upon this occasion; but when you consider what advantages have risen to us in a few months by the good understanding we have hitherto had, what wonderful effects it has already produced in the change of the whole scene of affairs abroad, so much more to the honour of the nation, and the figure it ought to make in the world, and that nothing can hinder a further progress in this way, to all our satisfactions, but fears and jealousies amongst ourselves; I will not apprehend that such a misfortune can befall us as a division, or but a coldness between me and you; nor that any thing can shake you in your steadiness and loyalty to me, who, by God’s blessing, will ever make you all returns of kindness and protection, with a resolution to venture even my own life in the defence of the true interest of this kingdom.’

Sir R. Sawyer. Turn to the Commons Journal, the 16th of Nov. 1685. [The Journal of the House of Commons put in.]

Clerk reads. ‘Die Lunæ, 16 die Novemb. 1685.

‘Most gracious Sovereign;

‘We your majesty’s most loyal and faithful subjects, the Commons in parliament assembled, do in the first place (as in duty bound) return your majesty our most humble and hearty thanks for your great care and conduct in the suppression of the late rebellion, which threatened the overthrow of this government both in church and state, and the uttermost extirpation of our religion by law established, which is most dear unto us, and which your majesty has been pleased to give us repeated assurances you will always defend and support, which with all grateful hearts we shall ever acknowledge.

‘We further crave leave to acquaint your majesty, That we have with all duty and readiness taken into our consideration your majesty’s gracious speech to us; and as to that part of it relating to the officers in the army not qualified for their employment according to an act of parliament made in the 25th year of the reign of your majesty’s royal brother of blessed memory, entitled, An Act for preventing dangers that may happen by Popish recusants, We do, out of our bounden duty, humbly represent unto your majesty, That those officers cannot by law be capable of their employments, and that the incapacities they bring upon themselves thereby, can no ways be taken off but by act of parliament.

‘Therefore, out of the great deference and duty we owe unto your majesty (who has been graciously pleased to take notice of their services to you), we are preparing a Bill to pass both houses for your royal assent, to indemnify them from the penalties they have now incurred; and because the continuance

of them in their employments may be taken to be dispensing with that law without act of parliament, the consequence of which is of the greatest concern to the rights of all your majesty’s dutiful and loyal subjects, and to all the laws made for the security of their religion:

‘We therefore, the knights, citizens, and burgesses of your majesty’s House of Commons, do most humbly beseech your majesty, that you would be graciously pleased to give such directions therein, that no apprehensions or jealousies may remain in the hearts of your majesty’s good and faithful subjects.’

Mr. Pollerfen. My lord, we pray that these half dozen lines of the statute 1 Eliz. may be read. [A Statute-Book was then produced by Mr. Ince.]

L. C. J. We will have it read out of our own book. [Which was delivered into court.]

Clerk reads. ‘This is 1 Eliz. cap. 2. An Act for uniformity of religion, &c. Whereabout is it?’

Mr. Ince. It is the 15th paragraph, at these words—And for due execution, &c.

Clerk reads. ‘And for due execution hereof, the queen’s most excellent majesty, the lords spiritual and temporal in this parliament assembled, do in God’s name earnestly require and charge all the archbishops and bishops, and other ordinaries, and they shall endeavour themselves, to the utmost of their knowledge, that the due and true execution hereof may be had throughout their dioceses and charges, as they will answer before God for such evils and plagues, wherewith Almighty God may justly punish his people for neglecting this good and wholesome law.’

Serj. Levinz. Now, my lord, if your lordship pleases, the charge is a charge for a libel, and there are two things to be considered.

First, Whether the bishops did deliver this paper to the king? But that we leave upon the evidence that has been given; only we say, there has been no direct proof of that.

In the next place, supposing they did deliver this petition to the king, Whether this be a libel upon the matter of it, the manner of delivering it, or the persons that did it?

And with submission, my lord, this cannot be a libel, although it be true that they did so deliver it.

First, my lord, there is little disingenuity offered to my lords the bishops, in only setting forth part, and not the whole; in only reciting the body, and not the prayer.

But, my lord, with your lordship’s favour, taking the petitionary part, and adding it to the other, it quite alters the nature of the thing; for it may be, a complaint without seeking redress might be an ill matter; but here taking the whole together, it appears to be a complaint of a grievance, and a desire to be eased of it.

With your lordship’s favour, the subjects have a right to petition the king in all their grievances, so say all our books of law, and so

says the statute of the thirteenth of the late king; they may petition, and come and deliver their petition under the number of ten, as heretofore they might have done, says the statute; so that they all times have had a right so to do, and indeed if they had not, it were the most lamentable thing in the world, that men must have grievances upon them, and yet they not to be admitted to seek relief in an humble way.

Now, my lord, this is a petition setting forth a grievance, and praying his majesty to give relief. And what is this grievance? It is that command of his, by that order made upon my lords the bishops, to distribute the declaration, and cause it to be read in the churches: and pray, my lord, let us consider what the effects and consequences of that distribution and reading is: it is to tell the people, that they need not submit to the Act of Uniformity, nor to any act of parliament made about ecclesiastical matters, for they are suspended and dispensed with. This my lords the bishops must do, if they obey this order; but your lordship sees, if they do it, they lie under an Anathema by the statute of 1 Eliz. for there they are under a curse if they do not look to the preservation and observation of that act: but this command to distribute and read the declaration, whereby all these laws are dispensed with, is to let the people know, they will not do what the act requires of them.

Now, with your lordship's favour, my lords the bishops lying under this pressure, the weight of which was very grievous upon them, they by petition apply to the king to be eased of it, which they might do as subjects: besides, my lord, they are peers of the realm, and were most of them sitting as such in the last parliament, where, as you have heard, it was declared, such a dispensation could not be; and then in what a case should they have been, if they should have distributed this declaration, which was so contrary to their own actings in parliament? What could they have answered for themselves, had they thus contributed to this declaration, when they had themselves before declared, that the king could not dispense?

And that this was no new thing, for it had been so declared in a parliament before, in two sessions of it, in the late king's reign, within a very little time one of another; and such a parliament that were so liberal in their aids to the crown, that a man would not think they should go about to deprive the crown of any of its rights. It was a parliament that did do as great services for the crown as ever any did, and therefore there is no reason to suspect, that if the king had had such a power, they would have appeared so earnest against it.

But, my lord, if your lordship pleases, these are not the beginnings of this matter; for we have shewed you from the fifteenth of Richard the second, that there was a power granted by the parliament to the king to dispense with a particular act of parliament, which argues, that it could not be without an act of parlia-

ment: and in 1662, it is said expressly, that they could not be dispensed with but by an act of parliament. It is said so again in 1672. The king was then pleased to assume to himself such a power as is pretended to in this declaration; yet upon information from his houses of parliament, the king declared himself satisfied that he had no such power, cancelled his declaration, and promised that it should not be drawn into consequence or example. And so the Commons, by their protestation, said in Richard the second's time, that it was a novelty, and should not be drawn into consequence or example.

Now, my lord, if your lordship pleases, if this matter that was commanded the bishops to do, were something which the law did not allow of, surely then my lords the bishops had all the reason in the world to apply themselves to the king, in an humble manner to acquaint him why they could not obey his commands; and to seek relief against that which lay so heavy upon them.

Truly, my lord, Mr. Attorney was very right in the opening of the cause at first, that is, That the government ought not to receive affronts, no, nor the inferior officers are not to be affronted; a justice of the peace, so low a man in office, is not. For a man to say to a justice of peace, when he is executing his office, that he does not right in it, is a great crime, and Mr. Attorney said right in it: but suppose a justice of peace were making of a warrant to a constable, to do something that was not legal for him to do, if the constable should petition this justice of the peace, and therein set forth, Sir, you are about to command me to do a thing which, I conceive, is not legal; surely that would not be a crime that he was to be punished for: for he does but seek relief, and shew his grievance in a proper way, and the distress he is under.

My lord, this is the bishops' case, with submission; they are under a distress, being commanded to do a thing which they take not to be legal, and they with all humility, by way of petition, acquaint the king with this distress of theirs, and pray him, that he will please to give relief.

My lord, there is no law but is either an act of parliament, or the common law; for an act of parliament there is none for such a power; all that we have of it in parliamentary proceedings, is against it; and for the common law, so far as I have read it, I never did meet with any thing of such a nature, as a grant or dispensation that pretended to dispense with any one whole act of parliament; I have not so much as heard of any such thing mentioned by any of the king's counsel; but here, my lord, is a dispensation that dispenses with a great many laws at once, truly I cannot take upon me to tell how many, there may be forty or above, for aught I know.

Therefore, my lord, the bishops lying under such a grievance as this, and under such a pressure, being ordered to distribute this de-

claration in all their churches, which was to tell the people they ought to be under no law in this case, which surely was a very great pressure, both in point of law and conscience too, they lying under such obligations to the contrary, as they did; with submission to your lordship, and you gentlemen of the jury, if they did deliver this petition (publishing of it I will not talk of, for there has been no proof of a publication, but a delivering of a petition to his majesty in the most secret and decent manner that could be imagined), my lords the bishops are not guilty of the matter charged upon them in this information. It has been expressly proved, that they did not go to disperse it abroad, but only delivered it to the king himself: and, in short, my lord, if this should be a libel, I know not how sad the condition of us all would be, if we may not petition when we suffer.

Mr. Finch. My lord, I challenge them to shew us any one instance of such a declaration, such a general dispensation of laws, from the conquest till 1672. The first umbrage of such a thing is that of Car. 2, 1662; but your lordship hears the declaration of the parliament upon it. Before that, as there was no such thing, so your lordship sees what the parliament did to enable the king (not to do this thing, but something like it) in Richard the second's time, where you see the parliament did give the king a power to dispense with the statute of provisors for a time; but at the same time declared that very grant of their own to be a novelty, and that it should not be drawn into consequence or example.

My lord, we shall leave it upon this point; to suspend law is all one as to abrogate laws; for so long as a law is suspended, whether the suspension be temporary, or whether it be for ever; whether it be at once, or at several times, the law is abrogated to all intents and purposes: but the abrogation of laws is part of the legislature, that legislative power is lodged (as I said before, and I could never find it otherwise in all our law) in Kings, Lord, and Commons.

L. C. J. You did open that before, Mr. Finch.

Mr. Finch. With this, my lord, that my lords the bishops finding this order made upon them to publish this declaration, did what in duty they were bound to do; and unless the jury do find, that they have done that which is contrary to law, and to the duty of their places, and that this petition is a libel and a seditious libel, with an intent to stir up sedition among the people (we rely upon it), my lords the bishops can never be found guilty upon this information.

L. C. J. Have you now done, gentlemen?

Mr. Finch. Yes, my lord, till they give us further occasion: if they have any other evidence to offer, we must answer it; if not, this is the answer we give to what they have said.

Sol. Gen. We make no bargain with you: if you have done, say so.

L. C. J. You must know, that you are not to have the last word.

Sol. Gen. You have been three hours already, if you have any more to say, pray conclude.

Mr. Finch. If they say they have no more evidence, then we know what we have to do.

L. C. J. If you do say any thing more, pray let me advise you one thing; don't say the same thing over and over again; for after so much time spent, it is irksome to all company as well as to me.

Mr. Finch. My lord, we have no more evidence to offer to your lordship at present, unless they, by offering new evidence, give us occasion to reply upon them.

L. C. J. Gentlemen, you shall have all the legal favour and advantage that can be; but pray let us keep to an orderly decent method of proceeding.

Sir R. Sawyer. Pray, my lord, favour me a word before we conclude. My lord, I do find very few attempts of this nature in any king's reign. In the reign of Henry the 4th, there was an act of parliament that foreigners should have a free trade in the city of London, notwithstanding the franchises of London: after the parliament rose, the king issued out his proclamation, forbidding the execution of that law, and commanding that it should be in suspense, 'usque ad proximum Parliamentum'; yet that was to be held against law.

L. C. J. Sir Robert Sawyer, that which you are to look to, is the publishing of this paper, and whether it be a libel or no. And as to the business of the parliament you mentioned, that is not to the purpose.

Sir R. Sawyer. My lord, I say, I would put it where the question truly lies; if they don't dispute the point, then we need not labour it; but I don't know whether they will or no, and therefore I beg your lordship's favour to mention one case more, and that is upon the statute of 31 Hen. 8. cap. 8. which enables the king by proclamation, in many cases, to create the law; which statute was repealed by 1 Edw. 6. cap. 12. That very act does recite, that the law is not to be altered, or restrained, but by act of parliament; and therefore the parliament enables the king to do so and so: but that was such a power, that the parliament thought not fit to continue, and it was afterwards repealed; but it shews, that at that time the parliament was of the same opinion, as to this matter, that other parliaments have been since.

Mr. Sommers. My lord, I would only mention the great case of Thomas and Sorrel in the Exchequer-chamber, upon the validity of a dispensation of the statute of Edward the 6th, touching selling of wine. There it was the opinion of every one of the judges, and they did lay it down as a settled position, that there never could be an abrogation, or a suspension (which is a temporary abrogation) of an act of parliament, but by the legislative power. That was a foundation laid down quite through the debate of that case. Indeed it was disputed,

how far the king might dispense with the penalties in such a particular law, as to particular persons; but it was agreed by all, that the king had no power to suspend any law: and, my lord, I dare appeal to Mr. Attorney General himself, whether, in the case of Godden and Hales, which was lately in this court, to make good that dispensation, he did not use it as an argument then, that it could not be expounded into a suspension: he admitted it not to be in the king's power to suspend a law, but that he might give a dispensation to a particular person, was all that he took upon to justify him at that time.

My lord, by the law of all civilized nations, if the prince does require something to be done, which the person who is to do it takes it to be unlawful, it is not only lawful, but his duty, *rescribere principi*. This is all that is done here, and that in the most humble manner that could be thought of. Your lordship will please to observe how far it went, how careful they were that they might not any way justly offend the king; they did not interpose by giving advice, as peers; they never stirred till it was brought home to themselves. When they made their petition, all they beg is, that it may not so far be insisted upon by his majesty, as to oblige them to read it. Whatever they thought of it, they do not take upon them to desire the declaration to be revoked.

My lord, as to matters of fact alledged in the said petition, that they are perfectly true, we have shewn by the journals of both houses. In every one of those years which are mentioned in the petition, this power of dispensation was considered in parliament, and, upon debate, declared to be contrary to law: there could be no design to diminish the prerogative, because the king hath no such prerogative. Seditious, my lord, it could not be, nor could possibly stir up sedition in the minds of the people, because it was presented to the king in private and alone: false it could not be, because the matter of it is true: there could be nothing of malice, for the occasion was not sought: the thing was pressed upon them; and a libel it could not be, because the intent was innocent, and they kept within the bounds set by the act of parliament, that gives the subject leave to apply to his prince by petition, when he is aggrieved.

Att. Gen. Have you done, gentlemen?

Mr. Finch. We have done, Sir.

Att. Gen. My lord, I shall be a great deal more merciful to your lordship and the jury than they have been, who have spent these four hours in that which I think is not pertinent to the case in question: they have let themselves into large discourses, making great complaints of the hardships put upon my lords the bishops, by the order of council, to read his majesty's declaration; and putting these words into the information of seditious, malicious, and scandalous: but, my lord, I admire that sir Robert Sawyer should make such reflections and observations upon these words, when I am sure

he will scarce find any one of his own exhibiting, that has so few of those aggravating words as this has; and therefore that might have been very well spared, especially by him.

In the next place, my lord, we are told what great danger our religion is in by this declaration: I hope we have an equal concern for that with them, or any person else whatsoever. But, however, I am sure our religion teaches us, not to preserve our religion, or our lives, by any illegal courses; and the question is, whether the course that my lords the bishops have taken to preserve, as they say, our religion, be legal or not? If it be not legal, then I am sure our religion will not justify the using such a course for never so good an end.

My lord, for the thing itself, I do admire that they, in so long a time and search that they have made, should not, which I expected, produce more precedents of such a paper as this is. They challenge us to shew, that ever there was any such declaration as this: I'll turn the same challenge upon them. Shew me any one instance, that ever so many bishops did come, under pretence of a petition, to reflect upon the king out of parliament.

Sir R. Sawyer. Is that your way of answering, Mr. Attorney?

Att. Gen. Pray, sir Robert Sawyer, you have had your time, don't interrupt us; sure we have as much right to be heard as you.

L. C. J. You have been heard over and over again, sir Robert Sawyer, already.

Sir R. Sawyer. My lord, I don't intend to interrupt him.

Sol. Gen. We cannot make them be quiet, they will still be chopping in upon us.

Att. Gen. That is an art that some people have always practised, not to permit any body to speak but themselves.

But, my lord, I say, that those few instances that they have produced, are nothing at all to this matter that is now upon trial before your lordship and this jury; nay, there are evidences against them; for they are only matters transacted in parliament, which are no more to be applied to this thing that is in controversy now, than any the most remote matter that could be thought of; and though they have gone so high in point of time, as to the reign of Richard the second, yet they have nothing between that and the late king's reign, to which they at last have descended down.

But, my lord, I say that all the talk of Richard the second's time is wholly out of the case: truly, I do not doubt but in Richard the second's time they may find a great many instances of some such sort of petitioning as this; for our histories tell us, that at that time they had 40,000 men in arms against the king; and we know the troubles that were in that king's reign, and how at length he was deposed: but certainly there may be found instances more applicable to the case, than those they produce. As for those in king Charles the 2nd's time, do they any ways justify this petition? For now they are upon justifying the words of their pe-

tion, that this power has been declared to be illegal in 1662, 1672, and 1685.

For what was done in 1662? do they shew any thing more than some debates in the House of Commons, and at last an address, an answer by the king, a reply of the Commons, and then the thing dies? Pray, my lord, is a transaction in the House of Commons, a declaration of parliament? Sure, I think, no one will affirm that any thing can be a declaration of parliament, unless he that is the principal part concurs, who is the king: for if you speak of the court of parliament in a legal sense, you must speak of the whole body, king, lords and commons, and a declaration in parliament must be by all the whole body; and this is properly an act of parliament.

Why then they come to the year 1672, where your lordship observes, that the late king did insist upon his right; for after the dispute, which was in 1662, his majesty did issue out another declaration, and when it comes to be debated in parliament, he insists upon his right in ecclesiastical matters; and though his declaration was cancelled, yet there is no formal disclaimer of the right.

My lord, after all, how far these things that they have offered may work as to the point that they have debated, I shall not now meddle with it, nor give your lordship any trouble about it, because it is not at all pertinent to the case in question; for I do (after all this time and pains that they have spent) take leave to say, that these gentlemen have spent all this time to no purpose.

L. C. J. Yes, Mr. Attorney, I'll tell you what they offer, which it will lie upon you to give an answer to; they would have you shew how this has disturbed the government, or diminished the king's authority.

Att. Gen. Whether a libel be true or not, as to the matter of fact, was it ever yet in any court of justice permitted to be made a question whether it be a libel or not? or whether a party be punishable for it? And therefore I wonder to hear these gentlemen to say, that because it is not a false one, therefore it is not a libel. Suppose a man should speak scandalous matter of any noble lord here, or of any of my lords the bishops, and a *scandalum magnatum* be brought for it, though that which is spoken has been true, yet it has been the opinion of the courts of law, that the party cannot justify it, by reason it tends the disturbing of the peace, to publish any thing that is matter of scandal: the only thing that is to be looked into, is, whether there be any thing in this paper that is reflecting and scandalous, and not whether it be true or no? for if any man shall extra-judicially, and out of a legal course and way, reflect upon any of the great officers of the kingdom, nay, if it be put upon any inferior magistrate, he is to be punished and is not to make his complaint against them, unless he do it in a proper way. A man may petition a judge; but if any man in that petition shall come and tell the judge, sir, you

have given an illegal judgment against me, and I cannot in honour, prudence, or conscience obey it; I do not doubt, nor will any man, but that he that should so say, would be laid by the heels, though the judgment perhaps might be illegal.

If a man shall come to petition the king, as we all know, the council-doors are thronged with petitioners every day, and access to the king by petition is open to every body, the most inferior person is allowed to petition the king; but because he may do so, may he therefore suggest what he pleases in his petition? Shall he come and tell the king to his face, what he does is illegal? I only speak this, because they say, in this case his majesty gave them leave to come to him to deliver their petition; but the king did not understand the nature of their petition, I suppose, when he said, he gave them leave to come to him.

My lord, for this matter we have authority enough in our books; particularly there is the case of Wrenham [Wraynham, see vol. 2, p. 1059.] in my lord Hobart. The lord chancellor had made a decree against him, and he petitioned the king that the cause might be re-heard; and in that petition he complains of injustice done him by my lord chancellor, and he put into his petition many reflecting things. This, my lord, was punished as a libel in the star-chamber; and in that book it was said, though it be lawful for the subject to petition the king against any proceedings by the judges, yet it must not be done with reflections, nor with words that turn to the accusation or scandal of any of the king's magistrates or officers, and the justice of the decree is not to be questioned in the case; for there Wrenham, in his defence, would have opened the particulars wherein he thought the decree was unjust, but that the court would not meddle with, nor would allow him to justify for such illegality in the decree: so in this case, you are not to draw in question the truth or falshood of the matter complained against; for you must take the way the law has prescribed, and prosecute your right in a legal course, and not by scandal and libelling.

My lord, there is a great deal of difference between not doing a thing that is commanded, if one be of opinion that it is unlawful, and coming to the king with a petition highly reflecting upon the government, and with scandalous expressions telling him, Sir, you act illegally; you require of us that which is against prudence, honour, or conscience, as my lords the bishops are pleased to do in this petition of theirs. I appeal to any lord here, that if any man should give him such language, either by word of mouth or petition, whether he would bear it, without seeking satisfaction or reparation by the law.

My lord, there is no greater proof of the influence of this matter than the crowd of this day, and the harangue that hath been made: is it not apparent that the taking this liberty to canvass and dispute the king's power and au-

thority, and to censure his actions, possesses the people with strange opinions, and raises discontent and jealousies, as if the free course of law were restrained, and arbitrary will and pleasure set up instead of it?

My lord, there is one thing that appears upon the face of the information, which shews this not to be the right course; and if my lords the bishops had given themselves the opportunity of reading the declaration seriously, they would have found in the end of the declaration, that the king was resolved to call a parliament in November. Might not my lords the bishops have acquiesced under their passive obedience till the parliament met? But nothing would serve them but this, and this must be done out of parliament, for which there is no precedent can be shewn, and this must be done in such a manner as your lordship sees the consequence of, by your trouble of this day.

There is one thing I forgot to speak to: they tell us, that it is laid malicious and seditious, and there is no malice or sedition found; we know very well that that follows the fact, those things arise by construction of law out of the fact. If the thing be illegal, the law says it is seditious; a man shall not come and say, he meant no harm in it; that was the case of Williams: * in his treasonable book, says he, I only intended to warn the king of the danger approaching, and concludes his book with God save the king; but no man will say, that a good preface at the beginning, or a good prayer at the end, should excuse treason or sedition in the body of a book. If I meet another man in the street and kill him, though I never saw him in my life, the indictment is, that it was 'ex malitia præcogitata,' as it often happens that a person kills one he never had acquaintance with before; and in *favorem vitæ*, if the nature of the fact be so, the jury are permitted to find according to the nature of the case; but in strictness of law there is malice implied: but, my lord, I think these matters are so common, and that is a point that has been so often settled, that the form of the indictment and information must follow the nature of the fact, that I need not insist upon it; if the act be unlawful, the law supplies the malice and evil intentions.

Sol. Gen. My lord, and gentlemen of the jury, I am of counsel in this case for the king, and I shall take leave to proceed in this method: first, I shall put the case of my lords the bishops, and then consider the arguments that have been used in their defence, and answer as much as is material to be answered; and then leave it to your lordship, and the jury's consideration, whether what has been said by these gentlemen, weigh any thing in this case.

First, my lord, I take it for granted, and I think the matter is pretty plain by this time, by my lord president's evidence, and their own confession, that it is not to be disputed, but

that this paper was presented by some of my lords the bishops to the king; I think there is no great difficulty in that matter; I just touch upon it, because I would follow them in their own method.*

* In sir William Williams's MSS. much of what follows is so materially altered that I have thought it best to print it here from those MSS.

Then, my lord, let us take this case as it is, upon the nature of the petition, and the evidence that they have given. Consider, then, whether it will justify all that is done: for the business of petitioning, I would distinguish between petitioning in parliament and petitioning out of parliament to the king, and inquire whether my lords the bishops out of parliament can present any petition to the king, and of what nature, if any? I do agree, that in parliament the lords and commons may petition or make addresses to the king, and signify their desires, and make known their grievances, and there is no doubt but that is the proper and natural way of application from the subjects to his majesty. In the beginning of the parliament, there are anciently receivers and triers of petitions appointed by the houses of parliament; and upon debates in parliament, there are committees frequently appointed to prepare and frame petitions and addresses to the king, as occasions require; but to deduce an argument from these proceedings, that because the lords in parliament have done thus, and the commons in parliament have done thus, therefore my lords the bishops may do it out of parliament, is no consequence; no such conclusion can be drawn from those premises. This I offer as an answer to their evidence and arguments in defence of this petition, from their parliamentary records and proceedings.

Pray, my lord, consider what evidence they have given, and how material it is in this case for their defence: they begun with that record in Richard 2d's time, which is no more than that the king might dispense with the statute of Provisoers till the meeting of the then next parliament, and a protestation of the commons at the end of it. Whether that be an act of parliament that is declaratory of the common law, or introductory of a new law *non constat*, and for aught appears, it might be a declaratory act; and if so, then it is rather an evidence of the king's prerogative of dispensing. It might be an act in affirmance of the king's prerogative; as there are a great many such acts we very well know, and generally most of the laws in that kind are in affirmance of the king's power. That act then turns as some argument for the king's prerogative, and then their own evidence will turn upon themselves, for they shew Richard 2. had that power, but whether that be an argument one way or other conclusive, is left to your lordship and the jury to consider.

They say there is no execution of such a power till very lately, and the first instance

* See it in this Collection, vol. 3, p. 770.

Then, my lord, let us take this case as it is, upon the nature of the petition, and the evidence that they have given, and then consider whether it will justify all that is done: for the business of petitioning, I would distinguish and inquire, whether my lords the bishops out of

that they produce is that in the year 1662. I do not take the exercise of power to be a proof of the right of it. Your lordship knows that before the reign of Henry the 4th, there was a large jurisdiction assumed by the lords in original causes till the Statute of Appeals, 1mo. Hen. 4, which takes notice that before that time the lords had assumed an original jurisdiction in all causes, and would proceed and determine them before themselves in parliament. And it fell out to be so great a grievance, that it was thought necessary to make a law against it, that appeals in parliament should be abolished and destroyed; then did the Statute of Appeals, a mighty law in favour of the subject of England, and the resolutions upon that statute, settle the bounds between the king and the lords in a great measure; before that time, the lords were grown very powerful, and where there is power there always follow applications. Since that statute, accusations are [qu. not] allowed to be before the lords in parliament, unless it be by impeachment of the commons, there is the benefit of that statute. It did abolish much of the power the lords had before assumed to themselves, and did establish the impeachment of the commons, which is as ancient as the parliament, for that was never yet spoken against; the power of the commons of impeaching any person in parliament under the degree of the prince, and that is the regular legal way, and this the commons have often asserted to be their ancient right. This is the proper course and way to address and apply to the king; that is the proper way and course to redress grievances. This, I conceive, had been the course that should have been taken by my lords the bishops; they should have staid to apply to the king till the complaint had come into parliament, and then it had been regular for them to address the king in a parliamentary way what was fit and proper perhaps to come upon the complaint by the impeachment of the commons; they interpose and give their advice before their time; if there be any irregularity in parliament or out of parliament, the lords and commons are to make their complaint of it, and have it redressed in parliament, and a man is not to be his own judge in any case, nor must all men create difficulties of their own, nor set upon petitioning in this sort; I neither do know of any precedent, ancient or modern, for petitioning by the lords the bishops to the king out of parliament in this sort; neither do I find that my lords the bishops, or their counsel, have produced any precedents; but it is said for my lords the bishops that were under an anathema, or some curse, that sir Robert Sawyer speaks of by the first of Elizabeth, and

parliament can present any petition to the king? I do agree, that in parliament the lords and commons may make addresses to the king, and signify their desires, and make known their grievances there; and there is no doubt but that is a natural and proper way of appli-

for fear of that they pursued this course; but my lords know, better fall into the hands of God than of men: I leave this to the casuists to consider, rather than trouble the court with it. I pass this over as a new fancy of their own, and to have no weight in a court of law.

My lord, the law continued thus, and was frequently practised for the punishment of high misdemeanors by impeachment in parliament, from 1 H. 4, till 3 H. 7, which doth establish the court of Star-Chamber, for the punishment of exorbitant crimes in the intervals of parliament, and in that court great men were often brought to judgment and punishment for their high misdemeanors; and though very great power was given that court, and the greatest officers of the kingdom, assisted with lords spiritual and temporal, who were made judges of that court, yet they arrogated to themselves a greater power and jurisdiction than the law gave them, whereby the very court grew grievous to the subject, and was therefore abolished by the statute of 7 Car. 1; and one of the reasons expressed in the statute for taking away of that court is, because the matters examinable and determinable in that court, may have their proper remedy, redress, and due punishment in the ordinary methods and course of justice. So that upon those two considerations, because that court became exorbitant, and because all misdemeanors that were punishable there might be punished in the ordinary courts of justice, that court was dissolved and taken away. As the statute of H. 4, multiplied impeachments in parliament by taking away the power and judicature assumed by the lords out of parliament to determine crimes out of parliament, or otherwise than by impeachment, so did the court of Star-Chamber, from 3 Hen. 7, to 17 Car. 1, lessen impeachments in parliament.

My lord, they find fault with the words of the information, and they say, Why are these words put in 'seditiose malitiose.' If the matter complained of in the information be libellous and seditious, we may lawfully suggest in the information, this was done 'seditiose;' and 'tis no more than the law speaks, it results out of the matter itself, and if it be a libellous paper, the law says it is maliciously and seditiously done; and those gentlemen need not quarrel with us, for so are all the informations for misdemeanours in all times: and 'tis no more than the 'vi et armis' inserted in informations where there is no actual 'vi et armis' done. 'Vi et armis,' that is, only a supposition of law, and they may as well object to the conclusion of the information, why it concludes 'contra coronam et dignitatem domini regis.'

cation: for in the beginning of the parliament, there are receivers of petitions appointed, and upon debates, there are committees appointed to draw up petitions and addresses; but to come and deduce an argument, that because the lords in parliament have done thus (there

If it be an illegal thing, as a libel, these are necessary consequences and results out of the subject matter of the information; it is no more than the speaking of the law upon the fact alleged.

But, my lord, let us a little consider whether this matter were warrantable, and whether my lords the bishops had any warrant or call to do what was done. They pretend it was done upon this account: the king had set forth a declaration, and ordered them to read it: to excuse themselves from such reading, they make this petition or this libel, call it what you will, and they use this as the main argument, that they say the king has done illegally; and they tell the king plainly so, as has been often declared in parliament, and particularly in 1662, 72, and 85, in the beginning of his majesty's reign, and expose the prudence, honour and conscience of what the king has done.

Pray, my lord, let us consider a little whether there be any such declaration in parliament that they have given evidence of: have they read in evidence any declaration in parliament in 1662, or 1672, or in the beginning of his majesty's reign, tending to what is a declaration in parliament? First, a bill that was enacted by king, lords and commons, we in law know and allow such to be a declaration in parliament. If a bill pass the commons it is no declaration in parliament; nay, if it pass the lords and commons it is not a declaration in parliament, except it also pass the king and have the royal assent; all these are only *in fieri*, and pass as nullities, and the law takes no notice of them. We have it in our books over and over, and no court ought to suffer any such evidence to be given, though received this day. I know those gentlemen are very well acquainted with the authorities in Fitzherbert tit. Parliament. There was said an act to be passed by the king and the lords, but because the commons did not agree to it, it is declared and adjudged to be as a nullity, and the court would take no notice of it; and how can any man call that a declaration in parliament which is only a vote of the house of commons, or of the lords: such only is the evidence given this day of declarations in parliament, to justify this petition.

My lord, there is another declaration in parliament, and so owned and allowed, as a judgment given by the lords as they are a court of judicature in parliament, and that is a declaration also in parliament; for if any matter comes judicially before the lords in parliament, either by writ of error or by natural appeal from any of the other courts, or by adjournment, and there be any judgment given, that is a declaration in parliament, and may fairly,

being such methods of proceedings usual in parliaments) therefore my lords the bishops may do it out of parliament, that is certainly a *non sequitur*, no such conclusion can be drawn from those premises.

My lord, I shall endeavour to lay the fact

and ought to be so called. So likewise, there is another declaration in parliament, which is, when any matter or crime comes before the lords in parliament upon an impeachment of the commons, and they give judgment upon that impeachment, that is a declaration in parliament: but to say that there is any other declaration in parliament, is to say more than these gentlemen have made out. If they can shew me any such declaration in parliament to justify this petition, I will submit to them, and not speak a word against my lords the bishops: but if these learned gentlemen cannot shew me any such declaration, then all that is said in this petition, under favour, doth not to me appear to be true.

Let us reflect what is there in this case, upon this evidence as they offer, for a declaration in parliament. That in 1662 is only a vote and an opinion of the house of commons; and I always understood, and have been told so by some of the gentlemen of the other side, that such a vote signified nothing: if any thing, not a judgment in parliament. Besides, it seems to be a mistaken address, for they say in it, that the declaration in 1662, against which they address, was the first declaration of that sort, to suspend laws without act of parliament; and yet, in the same breath, they take notice of the king's declaration from Breda, which was before 1662. Here is a mighty argument used from the king's speech, that because he wished he had such a power, this must be declared in parliament, that he had no such power. Is the speech of the prince a declaration in parliament? Would those gentlemen allow all the speeches that were made upon the opening of the parliament to be declarations in parliament? If the king had said in his speech at the opening of that parliament what he says now in his declaration, would you let that go for a declaration in parliament? Then the chancellor's, or keeper's speech, or the lord privy seal's, must be a declaration in parliament. Whoever speaks the sense of the king by his command, if he do not speak that which was law and right, is questionable for it in parliament; and several have been impeached for so doing: for they look not upon it as the king's speech, except it be according to law. Nothing can turn upon the prince but what is legal; if it be otherwise, it turns upon him that speaks it, for the king cannot err. I never did hear that a speech made by the chancellor in parliament (and I will appeal to all the lords that hear me in it), was a declaration in parliament.

Then, my lords, we come to the evidence in 1672, which, with that in 1662 and that in Breda, shew that this of the king's is not such

before you as it really is, and then consider what is proper for the court to take notice of, as legal proof or evidence: and I take it, all those precedents that they have produced of what the lords did, and what the commons did in parliament, is no warrant for them to shelter themselves under, against the information here in question.

[Here Mr. Justice Powell spake aside to the Lord Chief Justice thus.]

Mr. Just. *Powell*. My Lord, this is strange doctrine! Shall not the subject have liberty to petition the king but in parliament? If that be law, the subject is in a miserable case.

L. C. J. Brother, let him go on, we will hear him out, though I approve not of his position.

Sol. Gen. The lords may address to the king in parliament, and the commons may do it, but therefore that the bishops may do it out of parliament, does not follow. I heard nothing said that could have given colour to such a thing, but the curse that has been read in 1 Eliz.

But pray, my lord, let us consider that evidence they have given: they have begun with that record in Richard the second's time, and what is that? That the king may dispense with the statute of provisors till the meeting of the next parliament, and a protestation of the commons at the end of it, whether that be an act of parliament that is declaratory of the common law, or introductory of a new law, *non constat*; and for aught appears, it might be a declaratory act; and if so, it is a proof of the king's prerogative of dispensing. It might be an act in affirmance of the king's prerogative, as there

a novelty, but has been attempted sometimes before. In 1672, the king was in distress for money; being entangled in a Dutch war, and wanting supply, he capitulates with his commons, as you have heard it read in their evidence, and upon the commons address to his majesty, he asserts it to be his right, and makes his complaint to the lords how the commons had used him. Whereupon conferences did arise between the lords and commons about it; at length it all ends in a speech from the king, wherein he tells them of his present necessities, well mixed with such gracious compliances, as prevailed with the commons for a good lump of money. Will this amount to a declaration in parliament? Can my lords the bishops fancy or imagine that this is to be imposed upon the king or upon the court for a declaration in parliament?

Then last of all, for that evidence in 1685 in this king's time, what is it more than the commons make an address to the king, and complain to his majesty of some of his officers in his army, that did pretend to have a dispensation to bear offices contrary to the test act, without taking the test and oaths as the law requires, can this be called a declaration in parliament? Will all addresses made by the late parliaments be allowed to be declarations in parliament?

are a great many such, we very well know; and generally most of the laws in that kind, are in affirmance of the king's power; so that the law turns as an argument for the king's prerogative, and they have given him that which will turn upon themselves: so it stood in Richard the second's time; but whether that be an argument one way or other conclusive, is left to your lordship and the jury.

Ay, but say they, there is no execution of such a power till very lately, and the first instance that they produce is that in the year 1662. But your lordship knows, that before the reign of Henry the fourth, there was great jurisdiction assumed by the lords in original causes: then comes the statute of appeals, 1 Hen. 4, which takes notice, that before that time the lords had assumed an original jurisdiction in all causes, and would proceed and determine them in parliament and out of parliament; and it fell out to be so great a grievance, that it was thought necessary to make a law against it, that appeals in parliament should be abolished and destroyed; and then comes that law in favour of the subject of England, and that settles the bounds between the king and the Lords in a great measure. Before that time the Lords were grown very powerful, and where there is a power, there always will be applications; and what is the effect of that statute, 1 Hen. 4? For all that we endeavour is, to make things as plain as can be, that no further applications, no accusations, no proceedings in any case whatsoever be before the lords in parliament, unless it be by impeachment of the commons, so that there is the *salvo*; and the use that I make of it is this, the commons, by that very statute, did abolish the power that the lords had arrogated to themselves, and ordered, that they should not meddle with any cause, but upon the impeachment of the house of commons, and establish the impeachment of the commons, which is as antient as the parliament, for that was never yet spoken against, the power of the commons impeaching any person under the degree of the prince; and that is the regular legal way, and so the commons asserted their antient right, and whatsoever the lords took notice of, must come by application of the commons; then conferences were to pass between the Houses, and both Houses by address apply to the king. This is the proper way and course of parliament, of which my lord Coke says, it is known to few, and practised by fewer; but it is a venerable, honourable way: and this is the course that should have been taken by my lords here, and they should have stayed till the complaint had come from the commons in parliament, and then it had been regular for them to address the king; but they were too quick, too nimble.

And whereas the statute of Hen. 4 says, That no lord whatsoever shall intermeddle with any cause, but by the impeachment of the commons; they interpose and give their advice before their time: if there be any irregularity in

parliament, or out of parliament, the commons are to make their complaint of it, and a man must not be his own judge, nor his own carver, nor must every man create difficulties of his own, nor set upon petitioning in this sort: but there I lay my foundation, that in such a matter as this, there ought to have been the impeachment of the commons in parliament before these lords could do any thing; and I know nothing can be said for the bishops more than this, that they were under an anathema, under the curse that sir Robert Sawyer speaks of; and for fear of that, they took this irregular course. But some would say, better fall into the hands of God than of men: some would say so (I say), I know not what they would say; but these being the methods that these lords should have taken, they should have pursued that method; the law should have carved out their relief and remedy for them, but they were for going by a new fancy of their own.

My lord, the law continued thus, and was practised so till 3 Hen. 7, where the grievance was found, that offences in the intervals of parliament could not be well punished, and then comes the statute that sets up the court of Star-Chamber, and there men were often brought to judgment and punishment for their sins; and though very great power was given them, yet they arrogated to themselves a greater; and therefore that court is abolished by the statute of 15 Car. 1; and what is the reason of abolishing that statute? Because the Star-Chamber did not keep within their bounds that the law set them, but assumed to themselves a larger power than the law would allow, and grew very exorbitant and very grievous to the subject: and another reason was, which the statute of 15 Car. 1. founded itself upon, because there was nothing that was brought in judgment before that court, but might be relieved and remedied in the ordinary methods of justice in the courts of Westminster-Hall: so that upon those two considerations, because that court was exorbitant, and because all the sins and misdemeanors that were punished there, might be punished in an ordinary way of law in another court, and therefore there was no need of that court, and so it was abolished, and the subject was pretty safe. If there was a crime committed here, a man might come properly before your lordship into this court, and have it punished.

My lord, they find fault with the words in the information, and they say, Why are these words put in, seditious, malicious? If the matter be libellous and seditious, we may lawfully say, and it is no more than the law speaks, it results out of the matter itself; and, if it be a libellous paper, the law says, it is maliciously and seditiously done; and these gentlemen need not quarrel with us, for so are all the informations in all times past, and it is no more than the '*vi et armis*,' which is common form. It may be said, How can the publishing of a libel be said to be done '*vi et armis*?'

That is only a supposition of law, and they may as well object to the conclusion of the information, that it was '*contra coronam et dignitatem domini regis*.' If it be an illegal thing, or a libel, these are necessary consequences; it is no more than the speaking of the law upon the fact.

But, my lord, let us a little consider, whether this matter were warrantable, and whether they had any warrant to do what was done. They pretend it was done upon this account, That the king had set forth a declaration, and had ordered them to read it; which to excuse themselves from, they make this petition, or this libel (call it what you will), and they use this as the main argument, That they say the king has done illegally, and they tell the king plainly so, that it is illegal; for they take notice of this declaration, and say, it is illegal, because it is contrary to the declarations of parliament in 1662, 1672, and 1685.

Pray, my lord, let us consider a little, whether there be any declaration in parliament that they have given evidence of? Have they read any declaration of the parliament in 1662? What is a declaration in parliament, but a bill that is passed by the king, lords, and commons? That we know to be the meaning, and no other. If it pass the commons, it is no declaration in parliament; nay, if it pass the lords and commons, it is not a declaration in parliament, except it also pass the king. All these things are nullities, and the law takes no notice of them: we have it in our books over and over, and no court ought to suffer such evidence to be given. I know these gentlemen are very well acquainted with the authority in Fitzherbert, title, Parliament. There was such an act that was said to be by the king and the lords; but because the commons did not agree to it, it is declared and adjudged to be a nullity, and the court would take no notice of it; and how can any man call that a declaration in parliament, which is only a vote of the house of commons, or of the lords? No, sure, that is one of the heads I go upon; it is not a declaration in parliament, unless it be by an act of parliament.

Indeed, my lord, there is another sort of a declaration in parliament before the lords, as they are a court of judicature, and that is a fair declaration too; for if any thing comes judicially before the lords, either by writ of error, or by natural appeal from any of the other courts, or by adjournment, and there be any judgment given, that is a declaration in parliament, and may be fairly so called. So likewise there is another judicial declaration, which is, when any thing comes before the lords judicially, upon an impeachment of the commons, and they give judgment upon that impeachment, that is a declaration in parliament. But to say that there is any other declaration in parliament, is to say more than these gentlemen can make out. If they will shew me any such, I will submit to them, and not speak a word against my lords the bishops; but if

these learned gentlemen cannot shew me any such, then they have not said what was true in this petition, that it was so and so declared in parliament.

For let us consider what there is in this case upon this evidence; for that in 1662, is only a vote and opinion of the house of commons; and I always understood, and have been told so by some of the gentlemen of the other side, that such a vote signifies nothing: but besides, it seems to be a mistaken address, for they say in it, that the declaration in 1662, which they address against, was the first declaration of that sort to suspend laws without act of parliament; and yet in the same breath, they do take notice of the king's declaration from Breda. But here is a mighty argument used from the king's speech, that because he wished he had such a power, this must be declared in parliament that he had no such power. Is the speech of the prince a declaration to parliament? All the speeches that were made upon the opening of the parliament, will you say they are declarations in parliament? Then the chancellor, or the keeper's speech, or the lord privy seal's, must be a declaration in parliament. Whoever speaks the sense of the king, if he does not speak that which is law and right, is questionable for it, and several have been impeached for so doing; for they look not upon it as the king's speech, except it be according to law. Nothing can turn upon the prince but what is legal; if it be otherwise, it turns upon him that speaks it. I never did hear that a speech made by the chancellor (and I will appeal to all the lords that hear me in it) was a declaration in parliament.

Then, my lord, we come to the business in 1672, which, with that in 1662, and that in Breda, shews, that this of the king's is not such a novelty, but has been done often before. In 1672, the king was in distress for money, being entangled in a Dutch war, and wanted supply: he capitulates with his commons (you have heard it read), and, upon the commons address, he asserts it to be his right, and makes his complaint to the lords how the commons had used him; for when he gives them a fair answer, they replied, and there are conferences with the lords about it; but at length it all ends in a speech by the king, who comes and tells them of his present necessities, and so he was minded to remit a little at the instigation of the commons, and he has a good lump of money for it. Would this amount to a declaration in parliament? Can my lords the bishops fancy or imagine that this is to be imposed upon the king, or upon the court, for a declaration in parliament?

Then last of all, for that in 1685, in this king's time, what is it? The commons make an address to the king, and complain to his majesty of some of his officers in his army,*

* Here Mr. Justice Powell speaking to the Lord Chief Justice.

Mr. Just. Powell. My Lord, this is wide,

that might pretend to have a dispensation, something of that nature contrary to the Test Act; and what is done upon it? They make their application to the king, and the king answers them, and that is all: but since it is spoken of in the court, I would take notice that it is very well known by the case of Godding and Hales, the judgment of the court was against the opinion of that address.

But what sort of evidence is all this? Would you allow all the addresses of the House of Commons to be evidence? Give me leave to say it, my lord, if you suffer these votes, these copies of imperfect bills, these addresses and applications of one or both houses of parliament to the king, to be evidence of declarations in parliament, then what will or may be said of the * Bill of Exclusion? Shall any body assert or mention that Bill of Exclusion to be a declaration in parliament? If so, then there is declaration against declaration; the declaration of the commons against the declaration of the lords. I know not of what judgment my lords the bishops may now be concerning those things, especially votes, addresses and speeches, and bills which passed the commons in parliament, and their being declarations in parliament, but I am sure they have spoken against it heretofore; nay, I am sure some of them have preached against it.

And if my lords the bishops have said, these are declarations in parliament, and they are not declarations in parliament; and if they accuse the king of having done an illegal thing, because he has done that which has been declared in parliament to be illegal, when it was never so declared, then the consequence is very plain, that they are sometimes in some things mistaken, and I suppose by this time they believe it.

I dare say it will not be denied me, that the king may, by his prerogative royal, issue forth his proclamation; it is as essential a prerogative as it is to give his assent to an act of parliament to make it a law. And it is another principle, which I think cannot be denied, that the king may make constitutions and orders in matters ecclesiastical; and that these he may make out of parliament, and without the parliament. If the king may do so, and these are his prerogatives, then suppose the king do issue forth his royal proclamation (and such in effect is this declaration under the great seal) in a matter ecclesiastical, by virtue of his prerogative royal; and this declaration is read in the council, and published to the world, and then

Mr. Solicitor would impose upon us: let him make it out if he can, that the king has such a power, and answer the objections made by the defendants' counsel.

L. C. J. Brother, impose upon us! He shall not impose upon me; I know not what he may upon you; for my part, I do not believe one word he says.

* Here there was a great hissing. [See what passed at the end of the Trial.]

the bishops come and tell the king, Sir, you have issued out an illegal proclamation or declaration, being contrary to what has been declared in parliament; is not this a diminishing the king's power and prerogative in issuing forth his proclamation or declaration, and making constitutions in matters ecclesiastical? Is not this a questioning of his prerogative? Do not my lords the bishops in this case raise a question between the king and the people? Do not they, as much as in them lies, stir up the people to sedition? For who shall be judge between the king and the bishops? Says the king, I have such a power and prerogative to issue forth my royal proclamation, and to make orders and constitutions in matters ecclesiastical, and that without the parliament, and out of parliament. Say my lords the bishops, you have done so, but you have no warrant for it. Says the king, every prince has done it, and I have done no more than what is my prerogative to do. But this, say the bishops, is against law. How shall this be tried? Should not the bishops have had the patience to have waited till a parliament came and complained there, and sought redress. The question in this case is not whether the king may dispense with the law, but whether he may issue out his proclamation in matters ecclesiastical. Sir W. W.'s MS. when the king himself tells them, he would have a parliament in November next at furthest.

L. C. J. Pray, Mr. Solicitor, come close to the business, for it is very late.

Sol. Gen. My lord, I beg your patience; you have had a great deal of patience with them, pray spare me a little. I am saying, when the king himself tells them, that he would have a parliament in November at furthest,* yet they have no patience to stay till November, [at which time this power of dispensing with the law might very properly and naturally be examined and redressed, but my lords the bishops, MS.] make this application to him [himself complaining to himself against himself, by accusing him of an illegal procedure, MS.]. Is not this raising a question upon the king's prerogative in issuing forth declarations? and upon the king's power and right in matters ecclesiastical? And when I have said this, that my lords the bishops have so done, if it be true that they have raised a question upon the right of the king, and the power of the king in matters ecclesiastical, then they have stirred [to which they make themselves a party, doth not this tend to stir, MS.] up sedition. That they have so done is pretty plain: and for the consequence of it time will shew it. I shall appeal to the case in 2 Cro. 2 Jac. 1. That is a plain direct authority for me.

Just. Powell. Nay, Mr. Solicitor, we all very well know, to deny the king's authority

in temporals and spirituals, as by act of parliament, is high treason.

Sol. Gen. I carry it not so far, Sir. We have a gracious prince, and my lords the bishops find it so by this prosecution: but what says that case? It is printed in three books, in Noy 100, in Moor 375, and in Mr. Just. Cro. 371: what says that case? The king may make orders and constitutions in matters ecclesiastical.

Just. Powell. But how will you apply that case to this in hand, Mr. Solicitor?

*Sol. Gen.** I will apply it by and bye, Sir; I would first shew what it is: there is a convention of the greatest men in the kingdom.

Just. Powell. Indeed, Mr. Solicitor, you shoot at rovers.

Sol. Gen. There is the lord privy seal, the archbishop of Canterbury, and a great many others: it is the greatest assembly we meet with in our books, and all of them are of this opinion, that the king may make orders and constitutions in matters ecclesiastical.

My lord, there is another authority, and that is, from the statute 1 Eliz. which † erected the high commission court, and that statute was not introductory of a new law, but declaratory of the old law. The king by his proclamation declares his sense to do such and such a thing; the court and all persons there give their judgment and opinion upon that statute, that they looked upon it as the grossest thing, and the foulest affront to the prince, for any man to bring into question that power of the king in matters ecclesiastical: 'tis said to be a very high crime. Why then, my lord, what is done in this case?

Just. Powell. Mr. Solicitor, pray, when you are applying, apply that other part of the case too, which says, that it was a heinous offence to raise a rumour that the king did intend to grant a general toleration; and is there any law since that has changed it, Mr. Solicitor?

Sol. Gen. In the main, judgment goes another way. As for that part, it was personal to the prince that then was, of whom they had

* The case will apply itself when you have considered it. Upon hearing of that solemn case, there was a convention of the highest officers and greatest men in the kingdom to judge of it. Sir W. W.'s MS.

† In the MS. the remainder of this speech is thus given: "appointed commissioners to be made by the queen to hear matters ecclesiastical, and that statute was not introductory of a new law but declaratory of the common law, and the divulging of that ordinance by the queen's proclamation was held a gracious admonition. The court and all persons there delegated declare their judgment, that it was an high affront to the prince for any man to bring into question the power of the king in matters ecclesiastical: it is said there to be a very high crime: without farther incroaching upon your patience, I refer your lordship to the case at large, reported in those books."

* There is no reason to believe that James, when he said this, had the slightest intention of calling a parliament.

scandalously reported, that he intended to introduce popery. They looked upon this report as a scandal to king James, that it was a sowing of sedition, and stirring up people against the government, and that will come up to our case, I think, without particular application: for as some men do it on the right side, others do it on the left; and whoever he be that endeavours to bring a dislike of the king or government upon the people, may be said to be a mover of sedition against the prince; but that case, in some parts of it, I take to be personal to the prince himself, and does not go to his successors.

Now, my lord, I come to that which is very plain from the case of *De Libellis Famosis*, in lord Coke's Reports: if any person have slandered the government in writing, you are to examine the truth of that fact in such writing, but the slander which it imports to the king or government; and be it never so true, yet if slanderous to the king or the government, it is a libel, and to be punished: in that case, the right or wrong is not to be examined, or if what was done by the government be legal or no; but whether the party have done such an act. If the king have a power (for still I keep to that) to issue forth proclamations to his subjects, and to make orders and constitutions in matters ecclesiastical, if he do issue forth his proclamation, and make an order upon the matters within his power and prerogative; and if any one would come and bring that power in question otherwise than in parliament, that the matter of that proclamation be not legal, I say that is sedition, and you are not to examine the legality or illegality of the order or proclamation, but the slander and reflexion upon the government, and that, I think, is very plain upon that case, in the fifth Report *De Libellis Famosis*; for it says, If a person do a thing that is libellous, you shall not examine the fact, but the consequence of it; whether it tended to stir up sedition against the public, or to stir up strife between man and man, in the case of private persons: as if a man should say of a judge, he has taken a bribe, and I will prove it; this is not to be sent in a letter, but they must take a regular way to prosecute it according to law.

If it be so in the case of an inferior magistrate, what must it be in the case of a king? To come to the king's face, and tell him, as they do here, that he has acted illegally, doth certainly sufficiently prove the matter to be libellous. What do they say to the king? They say and admit, that they have an averseness for the declaration, and they tell him from whence that averseness doth proceed: and yet they insinuate that they had an inclination to gratify the king, and embrace the dissenters, that were as averse to them as could be, with due tenderness, when it should be settled by parliament and convocation. Pray what hath their convocation to do in this matter?

L. C. J. Mr. Solicitor-General, I will not interrupt you; but, pray come to the business

before us. Shew us that this is in diminution of the king's prerogative, or that the king ever had such a prerogative.

Sol. Gen. I will, my lord, I am observing what it is they say in this petition—They tell the king it is inconsistent with their honour, prudence and conscience, to do what he would have them to do: And if these things be not reflective upon the king and government, I know not what is. This is not in a way of judicature: possibly it might have been allowable to petition the king to put it into a course of justice, whereby it may be tried; but alas! there is no such thing in this matter.

It is not their desire to put it into any method for trial, and so it comes in the case *de Libellis Famosis*; for by this way they make themselves judges, which no man by law is permitted to do. My lords the bishops have gone out of the way, and all that they have offered does not come home to justify them; and therefore I take it, under favour, that we have made it a good case for the king: We have proved what they have done, and whether this be warrantable or not, is the question, gentlemen, that you are to try. The whole case appears upon record; the declaration and petition are set forth, and the order of the king and council. When the verdict is brought in, they may move any thing what they please in arrest of judgment. They have had a great deal of latitude, and taken a great deal of liberty; but truly, I apprehend, not so very pertinently. But I hope we have made a very good case of it for the king, and that you, gentlemen, will give us a verdict.

Just. Holloway. Mr. Solicitor, there is one thing I would fain be satisfied in: You say the bishops have no power to petition the king.

Sol. Gen. Not out of parliament, Sir.

Just. Holloway. Pray give me leave, Sir: Then the king having made such a declaration of a general toleration and liberty of conscience, and afterwards he comes and requires the bishops to disperse this declaration; this, they say, out of a tenderness of conscience, they cannot do, because they apprehend it is contrary to law, and contrary to their function: What can they do, if they may not petition?

Sol. Gen. I'll tell you what they should have done, Sir. If they were commanded to do any thing against their consciences, they should have acquiesced till the meeting of the parliament. [At which some people in the court hissed.]*

Att. Gen. This is very fine indeed! I hope the court and the jury will take notice of this carriage.

Sol. Gen. My Lord, it is one thing for a man to submit to his prince, if the king lay a command upon him that he cannot obey, and another thing to affront him. If the king will

* This and Mr. Attorney General's remark are cancelled in sir William Williams's MS. As to noise in court, see the end of the case.

impose upon a man what he cannot do, he must acquiesce; but shall he come and fly in the face of his prince? Shall he say it is illegal? and the prince acts against prudence, honour or conscience, and throw dirt in the king's face? Sure that is not permitted; that is libelling with a witness.

L. C. J. Traly, Mr. Solicitor, I am of opinion that the bishops might petition the king; but this is not the right way of bringing it in. I am not of that mind that they cannot petition the king out of parliament; but if they may petition, yet they ought to have done it after another manner: for if they may in this reflective way petition the king, I am sure it will make the government very precarious.

Just. Powell. Mr. Solicitor, it would have been too late to stay for a parliament; for it was to have been distributed by such a time.

Sol. Gen. They might have lain under it and submitted.

Just. Powell. No, they would have run into contempt of the king's command, without petitioning the king not to insist upon it; and if they had petitioned, and not have shewn the reason why they could not obey, it would have been looked upon as a piece of sullenness, and that they would have been blamed for as much on the other side.

Serj. Baldock. After so long a debate, I shall not trouble you long; most things that are to be said have been said; but I shall only say this in short: I cannot deny, nor shall not, but that the subject has a right to petition; but I shall affirm it also, he has a duty to obey; and that in this case, the power of the king to dispense with penal laws in matters ecclesiastical, is not a thing that is now in question, nor need we here have had these long debates on both sides. It may be perceived plainly, by the proofs that have been read, that the kings and princes have thought themselves that they had such a power, though it may be the parliament thought they had not; and therefore the declarations of the one or the other I shall not meddle with in this case. That power itself which the king has, as king of this realm, in matters rather ecclesiastical and criminal, than matters of property, may somewhat appear by what has been read before your lordship. But all this will be nothing in our case, neither has his majesty now depended so much upon this thing. The declaration has been read to you, and what's there said? The king there says, That for those reasons he was ready to suspend those laws; and be they suspended. Yet, my lord, with this too, that he refers it to, and hopes to make it secure by a parliament. So that there being this, it has not gone, I think, very far; and it not having been touched here, it is not a point of duty in my lords the bishops, as bishops, that's here inquired into. Whether they should have meddled with this or no, in this manner, is the question. That the king is supreme over all of us, and has a particular supremacy over them, as supreme ordinary and governor, and moderator of the church, is very

VOL. XII.

plain; and, my lord, it is as plain, that in such things as concern the church, he has a particular power to command them. This is not unknown, but very frequent and common in matters ecclesiastical, and matters of state. It is not here a question now, whether these declarations which they were commanded to take care of getting read, were legal or not legal? What prudence there was, what honour there was, what conscience there was, for their not reading it, is not the question neither: But the point was, the king as supreme ordinary of his kingdom, to whom the bishops are subject, does in council order; and what is it he orders? Their sending out and distributing his declaration. They were concerned in no more than that, and it had been a very pretty thing, a small thing, to send out the king's declaration to be read by the clergy. All the clergy were ordered to read it, but my lords the bishops were only commanded to distribute it. This he might do by virtue of his power ecclesiastical. And if this be not an evil in itself, and if it be not against the word of God, certainly obedience was due from my lords the bishops; active obedience was due from them to do so much as this. It was no consent of theirs, it was no approbation of theirs of what they read, that was required. So that if they had read it, or another had read it by the king's order, especially if that order be legal, they are bound to do it by virtue of their obedience, and not to examine more.

And, my lord, in this petition, here they come to relieve, not only themselves that were present, (for I speak to the preamble, as others before me have spoke to the conclusion) but they do involve the rest of the bishops that were absent; for it is in behalf of themselves, and their brethren, and all the clergy of that province. Now that all these should join in the petition, is a thing very uncertain. How does it construe here, whether they were all together and consented to it, or how all their minds could be so fully known, that they would be all involved in the disobedience to this order of the king? Then, my lord, what is the thing they are greatly averse to? There are two things required in the order: the bishops required to distribute the declaration to the inferior clergy, and the inferior clergy are required to read it. Then their averseness must be to distribute it, and the others to read it, and so they will be involved; none of whom did ever appear to have joined in it. And then they give reasons for their averseness; and it is true, reasons might have been given, and good reasons should be given, why they should not do this in duty to his majesty; more gentle reasons, and other kind of reasons than those that they have given.

L. C. J. Pray, brother, will you come to the matter before us?

Serj. Baldock. I have almost done, my lord.

Just. Powell. The information is not for disobedience, brother, but for a libel.

Serj. Baldock. No, Sir, it is not for dis-

obedience, but it is for giving reasons for the disobedience in a libellous petition, and I am going on to that. The declaration is said in the petition to be illegal; which is a charge upon the king, that he has done an illegal act. They say, they cannot in honour, conscience, or prudence, do it; which is a reflection upon the prudence, justice, and honour of the king in commanding them to do such a thing: and this appearing to have been delivered to the king by my lords the bishops, persons to whom certainly we all owe a deference, as our spiritual masters, to believe what things they say as most likely to be true; and therefore it having an universal influence upon all the people, I shall leave it here to your lordship and the jury, whether they ought not to answer for it.

Recorder. Will your lordship please to spare me one word?

L. C. J. I hope we shall have done by and bye.

Recorder. If your lordship don't think fit, I can sit down.

L. C. J. No, no, go on, sir Bartholomew Shower, you'll say I have spoiled a good speech.

Recorder. I have no good one to make, my lord, I have but a very few words to say.

L. C. J. Well, go on, Sir.

Recorder. That which I would urge, my lord, is only this: I think, my lord, we have proved our information, and that they have made no answer to it; for the answer they have made is but argumentative, and taken either from the persons of the defendants, as peers, or from the form of its being a petition. As peers, it is said they have a right to petition to, and advise the king; but that is no excuse at all; for if it contains matter reproachful or scandalous, it is a libel in them as well as in any other subject; and they have no more right to libel the king than his majesty's other subjects have; nor will the privilege of their peerage exempt them from being punished. And for the form of this paper, as being a petition, there is no more excuse in that neither: for every man has as much right to publish a book, or pamphlet, as they had to present their petition. And as it would be punishable in that man to write a scandalous book, so it would be punishable in them to make a scandalous, and a libellous petition. And the author of Julian the Apostate, because he was a clergyman, and a learned man too, had as much right to publish his book, as my lords the bishops had to deliver this libel to the king. And if the city of London were so severely punished as to lose their charter, for petitioning for the sitting of a parliament, in which there were reflecting words, but more soft—

Just. Holloway. Pray, good Mr. Recorder, don't compare the writing of a book to the making of a petition; for it is the birthright of the subject to petition.

Recorder. My lord, it was as lawful for the city of London to petition for the sitting of a

parliament, as it was for my lords the bishops to give reasons for their disobedience to the king's command: and if the matter of the city of London's petition was reckoned to be libellous, in saying that what the king had done in dissolving the parliament, was an obstruction of justice, what other construction can be made of my lords the bishops saying that the king's declaration is illegal? And if the matter of this petition be of the same nature with that of the city of London, your lordship can make no other judgment of it, but that it ought to have the same condemnation.

Just. Powell. Mr. Recorder, you will as soon bring the two poles together, as make this petition to agree with Johnson's book. They are no more alike than the most different things you can name.

Serj. Trinder. My lord, I have but one word.

L. C. J. How unreasonable is this now, that we must have so many speeches at this time of day! But we must hear it; go on, brother.

Serj. Trinder. My lord, if your lordship pleases, that which they seem most to insist upon on the other side, and which has not been much spoken to on our side, is, that this power which his majesty has exerted, in setting forth his declaration, was illegal, and their arguments were hypothetical. If it were illegal, they had not offended; and they offered at some arguments to prove it illegal; but as to that, my lord, we need not go much further than a case which is very well known here, which I crave leave to mention, only because the jury, perhaps, have not heard of it, and that was the case of sir Edward Hales;* where, after a long debate, it was resolved, That the king had a power to dispense with penal laws.

But, my lord, if I should go higher into our books of law, that which they seem to make so strange of, might easily be made appear to have been made a frequent and constant practice.—

L. C. J. That is quite out of the case, brother.

Serj. Trinder. I beg your lordship's favour for a word or two. If your lordship please to consider the power the king has, as supreme ordinary, we say, he has a power to dispense with these statutes as he is king, and to give ease to his subjects, as supreme ordinary of the whole kingdom, and as having supreme ecclesiastical authority throughout the kingdom. There might be abundance of cases cited for this, if there were need: the statute of *primo Eliz.* doubtless is in force at this time, and a great many of the statutes that have been made since that time, have express savings of the king's supremacy: so that the king's power is unquestionable. And if they have come and questioned this power in this manner, by referring themselves to the declarations in parliament, they have done that

* See Vol. 11, p. 1166, of this Collection.

which of late days has been always looked upon as an ill thing ; as if the king's authority was under the suffrages of a parliament. But when they come to make out their parliament declarations, there was never a one, unless it be first in Richard the second's time, that can properly be called a parliament declaration, so that of the several parliaments is a matter perfectly mistaken ; and if they have mistaken it, it is in the nature of false news, which is a crime for which the law will punish them. More things might be added, but I consider your lordship has had a great deal of patience already, and much time has been spent, and therefore I shall conclude, begging your lordship's pardon for what I have said.

L. C. J.* I do assure you, if it had not been

* Narcissus Luttrell gives a copious account of this trial, and of preceding and subsequent events connected with it. The following is his account of the latter part of the trial and of what followed it :

" June 29, 1688. The Chief Justice summed up the evidence, and left it to them if they thought there was sufficient to prove a publication, for if then I take it to be a libel, and so judge Allybone held ; but Holloway thought it was none, being not done with a seditious intent. Powell held the same, and said if the king had such a dispensing power, there was no need of parliaments, but in all his life he never had read of any such power. So the trial held 'till 6 in the evening, and the jury went away and lay together till 6 the next morning, when they agreed (one Arnold stood out till then, the rest agreed over night) they would give no privy verdict, but came into court, and being called they found all the defendants Not Guilty ; at which there was a most mighty huzzah, and shouting in the hall, which was very full of people ; and all the way they came down, people asked their blessing on their knees ; there was continued shoutings for half an hour, so that no business could be done ; and they hissed the Solicitor.

" And at night was mighty rejoicing in ringing of bells, discharging of guns, lighting of candles, and bonfires in several places, though forbid, and watchmen went about to take an account of such as made them ; a joyful deliverance to the Church of England.

" July 2. Several persons are taken up on account of making bonfires on the bishops' day, and for committing pretended disorders.

" July 7. Letters out of the country from several parts, speak of the great rejoicings that were observed in several towns for joy of the bishops' acquittal : particularly at Gloucester, Bristol, Bedford, Litchfield, &c.

" Bills were preferred against several persons at the sessions for riots in making bonfires the evening that the bishops were acquitted, but the grand jury found them ignominious.

" October. Sir William Williams's chamber windows in Gray's Inn, were broken very

a case of great concern, I would not have heard you so long. It is a case of very great concern to the king and the government on the one side, and to my lords the bishops on the other ; and I have taken all the care I can to observe what has been said on both sides. It is not to be expected that I should repeat all the speeches, or the particular facts, but I will put the jury in mind of the most material things, as well as my memory will give me leave ; but I have been interrupted by so many long and learned speeches, and by the length of the evidence which has been brought in, in a very broken, unmethodical way, that I shall not be able to do so well as I would.

Gentlemen, thus stands the case : it is an information against my lords the bishops, his

much one night and reflecting inscriptions fixed over his door."

" The imprisonment of the bishops was now uppermost in the minds of most of the people, who flocked to them in such numbers, for their blessing, and to condole their hard usage, that great and very extraordinary remarks were made both of persons and behaviour. Among the rest, ten nonconformist ministers went to pay them a visit, which the king took so heinously, that he sent for four of them to reprimand them ; but their answer was, That they could not but adhere to the prisoners, as men constant and firm to the Protestant faith, or to that purpose. Nay, what is more extraordinary, the very soldiers that kept guard in the Tower, would frequently drink good health to the bishops ; which being understood by sir Edward Hales, constable of the Tower, he sent orders to the captain of the guard, to see it was done no more ; but the answer he received was, that they were doing it at the very instant, and would drink that, and no other health, while the bishops were there.

" At length the first day of the term came about, when the archbishop and the rest moving for the Habeas Corpus, twenty-one of the very prime of the nobility appeared at the King's Bench to bail them, and they were bailed accordingly. Upon this occasion the hall and Palace-yards were crowded with thousands of people, who begging their blessing as they passed, the archbishop freely gave it, and as freely, at the same time, exhorted them to be constant to their religion. A fortnight afterwards, an information was exhibited against their lordships, in the King's Bench, for that they had framed and published a seditious libel, of which the jury would not find them guilty, the counsel for the bishops, the ablest of their profession in all England, produced such arguments in their behalf, that the judges were divided, two of them declaring that the proofs did not extend to the making their petition or address a libel, and two of them that they did, which cost sir Richard Holloway and sir John Powell their seats on the bench, as soon as the term was over. In

grace my lord of Canterbury, and the other six noble lords; and it is for preferring, composing, making, and publishing, and causing to be published, a seditious libel: the way that the information goes is special, and it sets forth, that the king was graciously pleased, by his royal power and prerogative, to set forth a declaration of indulgence for liberty of conscience, in the third year of his reign; and afterwards upon the 27th of April, in the fourth year, he comes and makes another declaration; and afterwards in May, orders in council that this declaration should be published by my lords the bishops in their several dioceses; and after this was done, my lords the bishops come and present a petition to the king, in which were contained the words which you have seen.

Now, gentlemen, the proofs that have been upon this, you will see what they are. The two declarations are proved by the clerks of the council, and they are brought here under the great seal. A question did arise, whether the prints were the same with the original declarations, and that is proved by Hills, or his

the course of this trial, the power of the king to dispense with the laws, that grand point, was most exquisitely discussed by the bishops' counsel, who were so much an overmatch for the king's, that at court it was most heartily wished this business had never been pushed to such a crisis. Westminster-hall, the Palace-yards, and all the streets about, were thronged with an infinite people, whose loud shouts and joyful acclamations upon hearing the bishops were acquitted, were a very rebellion in noise, though very far from so either in fact or intention. Bonfires were made, not only in the city of London, but in most towns in England, as soon as the news reached them; though there were strict and general orders given out to prevent all such doings; and the clergy preached more loudly, and more freely than ever against the errors of the Latin church. The next day I waited on the king to the camp on Hounslow-heath, where every body observed him to labour under a very great disturbance of mind; but he spoke very kindly to me as I rode by him, upon several occasions.

"I was present, as a justice, at the general sessions held for the liberty of Westminster, and some days afterwards, at the same held for the county of Middlesex, at Hicks's Hall, where I found such a strange revolution among the justices of the peace, so many papists and fanatics put into the commission, that I neither sought business, nor chose to mix with them. At this last place there were several indicted as rioters, for that they had been concerned in making of bonfires, or contributed thereto; but the grand jury would find no bill, though they were sent out no less than three times; so generally did the love of the bishops and the Protestant cause prevail." *Beresby's Memoirs*, p. 262.

man, that they were examined, and are the same. Then the order of the council was produced by sir John Nicholas, and has likewise been read to you. Then they come to prove the fact against the bishops, and first they fall to proving their hands. They begun indeed a great way off, and did not come so close to it as they afterwards did; for some of their hands they could hardly prove, but my lord archbishop's hand was only proved, and some others; but there might have been some question about that proof. But afterwards it came to be proved, that my lords the bishops owned their hands; which if they had produced at first, would have made the cause something shorter than it was.

The next question that did arise, was about the publishing of it, whether my lords the bishops had published it? And it was insisted upon, that no body could prove the delivery of it to the king. It was proved, the king gave it to the council, and my lords the bishops were called in, and there they acknowledged their hands; but nobody could prove how it came to the king's hands. Upon which we were all of opinion, that it was not such a publishing as was within the information; and I was going to have directed you to find my lords the bishops not guilty: but it happened, that being interrupted in my directions, by an honest, worthy, learned gentleman, the king's counsel took the advantage, and informing the court that they had further evidence for the king, we staid till my lord president came, who told us how the bishops came to him to his office at Whitehall, and after they had told him their design, that they had a mind to petition the king, they asked him the method they were to take for it, and desired him to help them to the speech of the king: and he tells them he will acquaint the king with their desire, which he does; and the king giving leave, he comes down and tells the bishops, that they might go and speak with the king when they would; and, says he, I have given direction that the door shall be opened for you as soon as you come. With that the two bishops went away, and said, they would go and fetch their other brethren, and they did bring the other four, but my lord archbishop was not there; and immediately when they came back, they went up into the chamber, and there a petition was delivered to the king. He cannot speak to that particular petition, because he did not read it, and that is all that he knew of the matter; only it was all done the same day, and that was before my lords the bishops appeared at the council.

Gentlemen, after this was proved, then the defendants came to their part; and these gentlemen that were of counsel for my lords, let themselves into their defence, by notable learned speeches, by telling you that my lords the bishops are guardians to the church, and great peers of the realm, and were bound in conscience to take care of the church. They have read you a clause of a statute made in queen

Elizabeth's time, by which they say, my lords the bishops were under a curse, if they did not take care of that law: then they shew you some records; one in Richard the second's time, which they could make little of, by reason their witness could not read it; but it was, in short, a liberty given to the king, to dispense with the statute of provisors. Then they shew you some journals of parliament; first in the year 1662, where the king had granted an indulgence, and the house of commons declared it was not fit to be done, unless it were by act of parliament: and they read the king's speech, wherein he says, he wished he had such a power; and so likewise that in 1672, which is all nothing but addresses and votes, or orders of the house, or discourses; either the king's speech, or the subjects addresses; but these are not declarations in parliament. That is insisted upon by the counsel for the king, that what is a declaration in parliament is a law, and that must be by the king, lords, and commons; the other is but common discourse, but a vote of the house, or a signification of their opinion, and cannot be said to be a declaration in parliament. Then they come to that in 1685, where the commons take notice of something about the soldiers in the army that had not taken the test, and make an address to the king about it: but in all these things (as far as I can observe) nothing can be gathered out of them one way or the other; it is nothing but discourses. Sometimes this dispensing power has been allowed, as in Richard the 2nd's time, and sometimes it has been denied, and the king did once waive it: Mr. Solicitor tells you the reason, there was a lump of money in the case; but I wonder indeed to hear it come from him.

Sol. Gen. My lord, I never gave my vote for money, I assure you.

L. C. J. But those concessions which the king sometimes makes for the good of the people, and sometimes for the profit of the prince himself (but I would not be thought to distinguish between the profit of the prince and the good of the people, for they are both one; and what is the profit of the prince is always for the good of the people), but I say, those concessions must not be made law, for that is reserved in the king's breast, to do what he pleases in it at any time.

The truth of it is, the dispensing power is out of the case, it is only a word used in the petition; but truly, I will not take upon me to give my opinion in the question, to determine that now, for it is not before me: the only question before me is, and so it is before you, gentlemen, it being a question of fact, whether here be a certain proof of a publication? And then the next question is a question of law indeed, whether if there be a publication proved, it be a libel?

Gentlemen, upon the point of the publication, I have summed up all the evidence to you; and if you believe that the petition which these lords presented to the king was this peti-

tion, truly, I think, that is a publication sufficient: if you do not believe it was this petition, then my lords the bishops are not guilty of what is laid to their charge in this information, and consequently there needs no inquiry whether they are guilty of a libel? but if you do believe that this was the petition they presented to the king, then we must come to inquire whether this be a libel.

Now, gentlemen, any thing that shall disturb the government, or make mischief and a stir among the people, is certainly within the case of 'Libellis Famosis;' and I must in short give you my opinion, I do take it to be a libel. Now this being a point of law, if my brothers have any thing to say to it, I suppose they will deliver their opinions.

Just. Holloway. Look you, gentlemen, it is not usual for any person to say any thing after the Chief Justice has summed up the evidence; it is not according to the course of the court: but this is a case of an extraordinary nature, and there being a point of law in it, it is very fit every body should deliver their own opinion. The question is, Whether this petition of my lords the bishops be a libel or no. Gentlemen, the end and intention of every action is to be considered; and likewise, in this case, we are to consider the nature of the offence that these noble persons are charged with; it is for delivering a petition, which, according as they have made their defence, was with all the humility and decency that could be: so that if there was no ill intent, and they were not (as it is not, nor can be pretended they were) men of evil lives, or the like, to deliver a petition cannot be a fault, it being the right of every subject to petition. If you are satisfied there was an ill intention of sedition, or the like, you ought to find them guilty: but if there be nothing in the case that you find, but only that they did deliver a petition to save themselves harmless, and to free themselves from blame, by shewing the reason of their disobedience to the king's command, which they apprehended to be a grievance to them, and which they could not in conscience give obedience to, I cannot think it is a libel: it is left to you,* gentlemen, but that is my opinion.

L. C. J. Look you, by the way, brother, I did not ask you to sum up the evidence (for that is not usual) but only to deliver your opinion, whether it be a libel or no.

Just. Powell. Truly I cannot see, for my part, any thing of sedition, or any other crime, fixed upon these reverend fathers, my lords the bishops.

For, gentlemen, to make it a libel, it must

* As to the respective provinces of judge and jury, see in this Collection the cases of *Lilburne*, vol. 4, p. 1379, et seq.; of *Bushell*, vol. 6, p. 1013, et seq.; of *R. Thompson*, vol. 8, p. 36, et seq.; and the other cases therein cited. See, too, particularly the case of the dean of *St. Asaph*, A. D. 1783, in this Collection, and the Statute, 32 G. 3, c. 60.

be false, it must be malicious, and it must tend to sedition. As to the falshood, I see nothing that is offered by the king's counsel, nor any thing as to the malice: it was presented with all the humility and decency that became the king's subjects to approach their prince with.

Now, gentlemen, the matter of it is before you; you are to consider of it, and it is worth your consideration. They tell his majesty, it is not out of averseness to pay all due obedience to the king, nor out of a want of tenderness to their dissenting fellow subjects, that made them not perform the command imposed upon them; but they say, that because they do conceive that the thing that was commanded them was against the law of the land, therefore they do desire his majesty, that he would be pleased to forbear to insist upon it, that they should perform that command which they take to be illegal.

Gentlemen, we must consider what they say is illegal in it. They say, they apprehend the declaration is illegal, because it is founded upon a dispensing power, which the king claims, to dispense with the laws concerning ecclesiastical affairs.

Gentlemen, I do not remember, in any case in all our law (and I have taken some pains upon this occasion to look into it), that there is any such power in the king, and the case must turn upon that. In short, if there be no such dispensing power in the king, then that can be no libel which they presented to the king, which says, that the declaration, being founded upon such a pretended power, is illegal.

Now, gentlemen, this is a dispensation with a witness; it amounts to an abrogation and utter repeal of all the laws; for I can see no difference, nor know of none in law, between the king's power to dispense with laws ecclesiastical, and his power to dispense with any other laws whatsoever. If this be once allowed of, there will need no parliament; all the legislature will be in the king, which is a thing worth considering, and I leave the issue to God and your consciences.

Just. *Allybone*. The single question that falls to my share is, to give my sense of this petition, whether it shall be in construction of law a libel in itself, or a thing of great innocence. I shall endeavour to express myself in as plain terms as I can, and as much as I can, by way of proposition.

And I think, in the first place, that no man can take upon him to write against the actual exercise of the government, unless he have leave from the government, but he makes a libel, be what he writes true or false; for if once we come to impeach the government by way of argument, it is the argument that makes it the government or not the government. So that I lay down that, in the first place, the government ought not to be impeached by argument, nor the exercise of the government shaken by argument; because I can manage a proposition in itself doubtful, with a better pen than another man: this, say I, is a libel.

Then I lay down this for my next position,

that no private man can take upon him to write concerning the government at all; for what has any private man to do with the government, if his interest be not stirred or shaken? It is the business of the government to manage matters relating to the government; it is the business of subjects to mind only their own properties and interests. If my interest is not shaken, what have I to do with matters of government? They are not within my sphere. If the government does come to shake my particular interest, the law is open for me, and I may redress myself by law: and when I intrude myself into other men's business that does not concern my particular interest, I am a libeller.

These I have laid down for plain propositions; now then let us consider further, whether, if I will take upon me to contradict the government, any specious pretence that I shall put upon it shall dress it up in another form, and give it a better denomination? And truly I think it is the worse, because it comes in a better dress; for by that rule, every man that can put on a good vizard, may be as mischievous as he will to the government at the bottom: so that whether it be in the form of a supplication, or an address, or a petition, if it be what it ought not to be, let us call it by its true name, and give it its right denomination—it is a libel.

Then, gentlemen, consider what this petition is: this is a petition relating to something that was done and ordered by the government. Whether the reasons of the petition be true or false, I will not examine that now, nor will I examine the prerogative of the crown, but only take notice that this relates to the act of the government. The government here has published such a declaration as this that has been read, relating to matters of government; and shall, or ought any body to come and impeach that as illegal, which the government has done? Truly, in my opinion, I do not think he should, or ought; for by this rule may every act of the government be shaken, when there is not a parliament *de facto* sitting.

I do agree, that every man may petition the government, or the king, in a matter that relates to his own private interest, but to meddle with a matter that relates to the government, I do not think my lords the bishops had any power to do more than any others. When the house of lords and commons are in being, it is a proper way of applying to the king: there is all the openness in the world for those that are members of parliament, to make what addresses they please to the government, for the rectifying, altering, regulating, and making of what law they please; but if every private man shall come and interpose his advice, I think there can never be an end of advising the government. I think there was an instance of this in king James's time, when by a solemn resolution it was declared to be a high misdemeanor, and next to treason, the king to put the penal laws in execution.

Just. *Powell*. Brother, I think you do mistake a little.

Just. *Allybone*. Brother I dare rely upon it that I am right: it was so declared by all the judges.

Sol. *Gen*. The Puritans presented a petition to that purpose, and in it they said, if it would not be granted, they would come with a great number.

Just. *Powell*. Aye, there it is.

Just. *Allybone*. I tell you, Mr. Solicitor, the resolution of the judges is, That such a petition is next door to treason, a very great misdemeanor.

Just. *Powell*. They accompanying it with threats of the people's being discontented.

Just. *Allybone*. As I remember, it is in the second part of the folio 35, or 37, where the resolution of the judges is, That to frame a petition to the king, to put the penal laws in execution, is next to treason; for, say they, no man ought to intermeddle with matters of government without leave of the government.

Serj. *Pemberton*. That was a petition against the penal laws.

Just. *Allybone*. Then I am quite mistaken indeed, in case it be so.

Serj. *Trinder*. That is not material at all which it was.

Mr. *Pollexfen*. They there threatened, unless their request were granted, several thousands of the king's subjects would be discontented.

Just. *Powell*. That is the reason of that judgment, I affirm it.

Just. *Allybone*. But then I'll tell you, brother, again, what is said in that case that you hinted at, and put Mr. Solicitor in mind of: for any man to raise a report that the king will or will not permit a toleration, if either of these be disagreeable to the people, whether he may or may not, it is against law; for we are not to measure things from any truth they have in themselves, but from that aspect they have upon the government; for there may be every tittle of a libel true, and yet it may be a libel still: so that I put no great stress upon that objection, that the matter of it is not false; and for sedition, it is that which every libel carries in itself; and as every trespass implies *vi & armis*, so every libel against the government carries in it sedition, and all the other epithets that are in the information. This is my opinion as to law in general. I will not debate the prerogatives of the king, nor the privileges of the subject; but as this fact is, I think these venerable bishops did meddle with that which did not belong to them: they took upon them, in a petitionary, to contradict the actual exercise of the government, which I think no particular persons, or singular body, may do.

L. C. J. Gentlemen of the jury, have you a mind to drink before you go?

Jury. Yes, my lord, if you please. [Wine was sent for for the jury.]

Juryman. My lord, we humbly pray that your lordship will be pleased to let us have the papers that have been given in evidence

L. C. J. What is that you would have, Sir?

Sol. *Gen*. He desires this, my lord, that you would be pleased to direct that the jury may have the use of such writings and statute-books as may be necessary for them to make use of.

L. C. J. The statute-book they shall have.

Sol. *Gen*. But they can have no papers but what are under seal.

Serj. *Levinz*. They may have them by consent, and they may have a copy of the information.

L. C. J. They shall have a copy of the information, and the declarations under seal.

Mr. *Pollexfen*. If they have those, and the libel, as they call it, they will not need a copy of the information.

Att. *Gen*. My lord, we pray that your lordship would be pleased to ascertain what it is they shall have.

L. C. J. They shall have a copy of the information, the libel, and the declarations under the great seal.

Sol. *Gen*. But not the Votes of the House of Commons, nor the Journals, for they are not evidence.

L. C. J. No, I don't intend they shall.

Sir R. *Sawyer*. My lord, we pray they may have the whole petition.

Just. *Holloway*. That is, with the direction and prayer, you mean.

Att. *Gen*. Yes, with all our hearts.

[Then the court arose, and the jury went together, to consider of their verdict, and stayed together all night, without fire or candle.]

On Saturday the 30th day of June, 1688, about ten o'clock in the morning, the archbishop, and the rest of the bishops, came again into the court, and immediately after the jury were brought to the bar.

Sir S. *Astry*. Crier, take the appearance of the jury. Sir Roger Langley.

Sir Roger Langley. Here.

Crier. Vous avez, &c. And so all the rest were called, and answered. Then proclamation for silence was made.

Sir S. *Astry*. Gentlemen, are you agreed on your verdict? Jury. Yes.

Sir S. *Astry*. Who shall say for you?

Jury. Foreman.

Sir S. *Astry*. Do you find the defendants, or any of them, guilty of the misdemeanor whereof they are impeached, or not guilty?

Foreman. Not guilty.

Sir S. *Astry*. Then hearken to your verdict, as the court hath recorded it.—You say, the defendants, and every of them, are not guilty of the misdemeanor whereof they are impeached; and so you say all?—Jury. Yes.

[At which there were several great shouts in court, and throughout the hall.]

Mr. Solicitor General taking notice of some persons in court that shouted, moved very earnestly that they might be committed: whereupon a gentleman of Gray's-Inn was laid

hold of, but was soon after discharged. And after the shouting was over, the Lord Chief Justice reproving the gentleman, said;

L. C. J. I am as glad as you can be that my lords the bishops are acquitted; but your manner of rejoicing here in court is indecent, you might rejoice in your chamber, or elsewhere, and not here. [Then speaking to Mr. Attorney, he said:]

Have you any thing more to say to my lords the bishops, Mr. Attorney?

Att. Gen. No, my lord. [Then the Court arose, and the bishops went away.]

After the revolution, complaint was made against the proceedings in this case, as in others.

I find in the Lords' Journal, that on May 1st, 1689, "The earl of Huntingdon made report from the committee of privileges, 'That the duke of Grafton, the lord Lovelace, the archbishop of Canterbury, the bishops of St. Asaph, Bristol, Peterborough, Ely, Bath and Wells, and Chichester, having been desired by the lords of the committee to cause to be brought this day before their lordships, a relation in writing of the proceedings against their lordships, in the court of King's Bench, in prejudice to the privileges of the peers in general, as well as to their persons in particular; which having not been done by any of the said lords, that it is the opinion of the committee, that the House be moved to take some effectual order therein.'"

"Upon report from the lords committees for privileges, it is ordered, by the lords spiritual and temporal in parliament assembled, That Mr. Ince do attend their lordships, with an account, in writing, of the proceedings that were had, in the court of King's Bench, against the archbishop of Canterbury, the bishop of Bath and Wells, the bishop of St. Asaph, the bishop of Bristol, bishop of Ely, bishop of Chichester, and bishop of Peterborough, in Trinity term last."

But I have not discovered that any farther proceedings were had on the matter.

All the historians of this period relate the expressions of joy which this acquittal of the bishops called forth. Kennett writes as follows:

"There were immediately very loud acclamations through Westminster-hall, and the words 'Not guilty,' 'Not guilty,' went round with such shouts and huzzas, that the king's Solicitor moved very earnestly that such as had shouted in the court might be committed. But the shouts were carried on through the cities of Westminster and London, and flew presently to Hounslow-heath, where the soldiers in the camp echoed them so loud that it startled the king, who was that day entertained in the earl of Feversham's tent: inso-

much that his majesty sent him out to know what was the matter. The earl came back and told the king, 'It was nothing but the soldiers shouting upon the news of the bishops being acquitted.' The king replied, 'And do you call that nothing? but so much the worse for them.' What his majesty meant by the last words he had not much time to interpret: he could only shew some indignation, that the bishops had escaped a legal penalty, and he threatened to deliver them up to the ecclesiastical commissioners. And for the two judges, Holloway and Powell, he immediately turned them out, and would have meditated some farther severity, if his following reign would have allowed it.

"This acquitment of the bishops encouraged the clergy in their honest resolutions of not reading the Declaration; but the ecclesiastical commissioners were instructed to call them to an account for it, for which purpose, on July 12, they met in the council-chamber and made an order, 'That whereas they had received information that divers rectors, vicars and curates, had omitted or neglected to read the said Declaration, to the manifest contempt of his majesty's authority-royal, they do hereby command and require all chancellors, archdeacons, commissaries and officials, to inquire strictly within their respective jurisdictions, in what churches and chapels his majesty's said Declaration was read, and in what churches and chapels the same was omitted, and to transmit an account thereof upon the 16th of August next.' The commissioners met again on that day, and finding that little or no inquiry had been made, they were much divided what to do in the matter. After a long consultation they were content to give longer time, and therefore published another order, 'Commanding all chancellors, archdeacons, commissaries, officials, and others having ecclesiastical jurisdiction, strictly to inquire of the church-wardens, as one of their articles of inquiry, at their respective visitations, (which visitations they were required to hold and keep before the 15th day of November next) in what churches and chapels his majesty's said Declaration was read, and in what the same was omitted, and to transmit an account thereof to them on the 6th day of December next.' But Providence prevented a return to this inquiry. The bishop of Rochester finding by this time the drift of the ecclesiastical commission, thought it inconsistent with his profession and character to act any longer in it, and therefore he wrote a letter to his colleagues, desiring to be excused from sitting amongst them."

It appears, that the 'Declaration' was not read in more than seven churches in London, and two hundred throughout England. See Kennett, Rapin, Burnet, and Hume.

May 20th, 1688, being the day appointed for reading the King's Declaration in London, it was only read in some few places, as at West-

minster-abbey," [Sprat being Dean. See the Introduction to the Trials for the Rye-House Plot, vol. 9, p. 362], "at Serjeants'-Inn, in Fleet-street," [a chapel, I apprehend, belonging to the Judges and other Serjeants at Law], "Mr. Hall's in Wood-street, Mr. Elliott's at Duke's-place," and some few others.

"The bishops that were for reading the King's Declaration, and dispersed it into their bishoprics, were the bishops of Durham," [Crew: he absconded for some time, but returned and took the oaths to King William.* He was excepted out of the 'Bill of Indemnity and Free Pardon,' passed in 1690, but made his peace and retained his bishopric many years]. "Lincoln," [Barlow. He took the oaths to King William]. "Hereford," [Croft. He wrote 'The Naked Truth.' He was deprived for not taking the oaths to King William]. "Rochester," [Sprat, who was one of King James's privy councillors. See some account of him as above. He took the oaths to King William]. "Chester," [Cartwright. See some account of him, p. 27, of this Vo-

* "The bishop of Durham, who had been at the House but twice before, came to day to give his vote against the king, who had raised him." Clarendon's Diary, Feb. 6, 1689.

lume], and "St. David's," [Watson. He took the oaths to King William; but, in 1699, was deprived for simony. See his Case in this Collection]. Narcissus Luttrell's MS. "Brief Historical Relation," &c.

"It generally happened wherever it was read, that the congregation immediately left the church. One minister, before he began to read it, told his flock, 'that he could not refuse the order sent him to read the Declaration, but that he knew no order which obliged them to hear it.'" Rapin.

After the acquittal of the bishops on the prosecution for their petition, it appears that James entertained the design of proceeding before the ecclesiastical commissioners against them for not causing his 'Declaration' to be read. No such proceedings, however, were instituted; but the ecclesiastical commissioners endeavoured to enforce the reading of the Declaration by the compelled instrumentality of the archdeacons and chancellors, of whom some undisguisedly resisted the attempt, and some less resolutely excused their non-compliance. Narcissus Luttrell relates, that on October the 5th, the king declared in council that the ecclesiastical commission was dissolved.

The following Articles, extracted from Tanner's MSS. in the Bodleian Library at Oxford, give some curious particulars relating to this interesting transaction, and the persons concerned in it. See Gutch's *Collectanea Curiosa*.

Princess of Orange's Letter to Archbishop Sancroft.

Loon, Oct. 1, 1687.

Though I have not the advantage to know you, my lord of Canterbury, yet the reputation you have makes me resolve not to loose this opportunity of making myself more known to you, than I could have been yet. Dr. Stanly can assure you, that I take more interest in what concerns the church of England than myself, and that one of the greatest satisfactions I can have is to hear how all the clergy shew themselves as firm to their religion, as they have always been to their king, which makes me confident God will preserve his church, since he has so well provided it with able men. I have nothing more to say, but beg your prayers, and desire you'll do me the justice to believe, I shall be very glad of any occasion to shew the esteem and veneration I have for you.

MARIE.

To the Archbishop of Canterbury.

VOL. XII.

*Copy of the Archbishop's Answer: probably never sent.**

May it please your royal highness,

The high and dear esteem you have of the church and holy religion established amongst us, which you are pleased so emphatically to

* This probability arises from the following letter written in the year 1715, by Dr. Stanley to Dr. Hicks, which is published by Mr. Gutch in the introduction to the first volume of his *Collectanea*:

"Sir; *Amen Corner, May 26.*

"I do not remember, that I ever heard, that the late good archbishop Sancroft was thought to have invited the prince of Orange over into England. If any one did charge him with it, I believe it was without grounds. All that I can say as to the matter is, that an. 1687, when I came into England out of Holland, I confess I did desire the archbishop to write to the then princesse of Orange, on whom I had the ho-

declare in your *gracious** letter *with* which you were lately pleased to honour me with, and the full assurance which farther Dr. St. gives ^{us}

me that you hold this pious good affection towards [us] in common with that great and ex-

cellent prince in whose bosom you lie, are ^{mighty} *such* strong and rich consolations, which as we never

needed more than now, ^{so} *nor* could they never come more seasonable or welcome to us. It hath seemed good to the infinite wisdom to exercise this poor Ch. with trials of all sorts and of all degrees. But the greatest calamity that ever

^{was} befell us *is* that it pleased God in his wise and just providence to permit wicked and ungodly men, after they had barbarously murdered the father, to drive out the sons from abiding in the

inheritance of the Lord, ^{as if they} *and as it were to say* had said to them go and serve other Gods.

^{dreadfull} The *dismall* effects hereof we still feel every ^{must}

moment but *can* not, nay we cannot particularly express. And though all this (were it yet much more) cannot in the least shake or alter our steady loyalty to our sovereign and the roial family in the legal succession of it, yet it im-

bitters the very comforts that are left us; it blasts all our present joys and makes us sitt down with sorrow in dust and ashes. Blessed ^{night} be God who in so dark and dismal a *time* hath caused some dawn of light to break forth upon us from the Eastern shore, in the constancy and good affection of your roial highness and the excellent prince towards us, for if this should fail us too (which the God of Heaven and Earth forbid) our hearts must surely break. And as our thanksgivings for you both go up before God continually, so we all pray for you without ceasing, that God would crown you with all the blessings of Heaven and Earth. He hath inspired your R. Highness (with Marie in the Gospel) to chuse the better part, and I trust it shall never be taken from you. Be faithfull unto death and he will give you a crown of life. In the close of all your roial highnesses personal but most undeserved grace and fa-

nour to attend, to encourage her still to give countenance to the church of England: but he ^{was} pleased not to write to her. And afterwards when we were come over into England, and a report being spread abroad, that some of the lords spiritual as well as temporal had invited the prince of Orange into England, in my discoursing with the archbishop, I remember he said to me, I am now glad I did not write to the princesse as you desired, for if I had written to her, they would have said, that I had sent to invite them over. This is true, and this is all that I can say of that affair.

I am, Sir, &c. WILL. STANLEY.

* The words in *italic* are erased in the original.

your to your poor unworthy servant must not be forgotten, *whereby* which you have put ^{a dying} ^{ready to} new life into *an* old man, *who was ever* sinking under double the burthen of age and sorrow,

^{so long as} but will *while* he holds his soul in life continue *to be* indeclinably to be what he is upon so many obligations. (May it please your roial highness) Your m. devoted faithful humble servant and daily Orator, at the throne of Grace.

"W. C."

"Lambhith House, Nov. 3, 1687."

Dr. Stanley's Letter to Archbishop Sancroft.

Hague, Jan. 24, (Febr. 3) 1687-8.

May it please your grace;

When I returned hither [from] England, I durst not make bold to trouble your grace so much, as to acquaint you how graciously and kindly the princess received your grace's letter, and the prince your humblest service, but desired my uncle Dr. Beveridge to do it for me, which I doubt not but he hath done. But I reckon myself bound in duty now to address myself immediately to your lordship by reason of something which hath lately happened here; with which, I think, I ought to acquaint your grace, who I know are so truly concerned for the good of our church, and so in some measure prevent the ill reports which may possibly be raised of our excellent princess.

I suppose your grace may have heard, that the king hath not been wanting to press his daughter here to be favourable to popery; but least you should have heard more than is trae, and that the papists should (as their way is) dishearten people, by representing her as inclined to them, I presume to acquaint your lordship with the sum of all that hath passed (her royal highness [being] pleased to make me privy to it, and giving me express leave to communicate it to your grace.) Whatever reports have been raised, the king hath scarcely ever spoken or written to our excellent princess to persuade her to popery till last Christmas: when the marquis d'Abbeville came hither the king sent to her a very long letter of two sheets of paper, written with his own hand, containing the motives of his own conversion to popery. This letter the marquis d'Abbeville gave to the princess on Christmas-day. The sum of the letter (for she shewed it me afterwards) was this; that he had been during his exile zealous for the Church of England, and was scarcely ever spoken to by any body, but one Nun, to turn papist. Nay he endeavoured to confirm his brother the duke of Gloucester in the Church of England; from which he was once thought to be warping. But he says, that the first thing that wrought with him, was, the holy and exemplary lives and constant devotion of those of the Church of Rome, the divisions among Protestants, with the necessity of an infallible judge to decide controversies, together with some promises which Christ

made to his church in general, that the gates of Hell should not prevail against it, and some others made to St. Peter; and there being no person that pretends to infallibility but the bishop of Rome, he concluded this church and infallibility must needs be with them. Afterwards he is very severe against the Church of England for its cruelty towards dissenters; saying, that dissenters can give as good reasons for their separating from us, as we for our departure from Rome; nay, that any county in England can with as much reason separate from the rest, and choose officers and make laws for itself, as we could separate from the bishop of Rome, and from those that hold communion with him. This is the main of what I remember was in the king's letter. Our excellent princess seeing this letter written with the king's own hand, was resolved not only to write an answer, as the king desired, but to write it presently, and without consulting us, that he might see she was very ready to give an account of herself, and might be [able] truly to say it was her own answer. And therefore the very next day being post day, she made haste and wrote a letter of two sheets of paper (which she afterwards did read to me) which truly I can without flattery say, I think was one of the best letters that I ever saw, and as full to the case as I could desire, she treating him with that respect that was due to her father, and a king, and yet speaking her mind freely and openly as became the cause of religion; answering every objection so handsomely, that I confess [I] could [not] sufficiently admire it, and thank God for it. And in vindication of our church said, that as she had used all means to inform herself concerning religion, so she was well satisfied in what she had done, when she embraced the Church of England, and she hoped that God would give her grace to live and die in it. Besides much more which it would be too long to trouble your grace with. I confess I never was so fully satisfied in my life, as on this occasion with her, and though I knew she did understand her religion exceeding well, yet now me-thoughts she even outdid herself. And if ever I can procure a copy of her letter, I hope it may be with leave of communicating it to your grace and my lord of London, and I am sure you would be very well pleased with it.

After she had sent this letter to the king, his majesty was pleased to answer little or nothing, but would have had her discoursed with Father Morgan, who was rector of the jesuits college at Rome, and now lives with marq. d'Abbeville; but though she would willingly answer whatever the king shall write to her, she hath absolutely refused to admit this jesuit to discourse with her; for if she should allow of any such discourse, she is sensible how they would boast presently, that she listened to them, and was inclining towards them; which, I thank God, I think she is as far from, as I can desire. And besides

she hath given me this assurance, that if ever there should be any objection or difficulty put to her, which she cannot clearly answer, she will not fail to command my advice and assistance in it. I make bold to acquaint your grace thus at large with this affair, that if the papists should raise any report of it, your grace may have somewhat wherewithall to satisfy yourself and others, so far as in your great prudence you think fit. Our excellent princess's reputation as to religion being of so great moment, I hope your grace will pardon my thus representing this matter between the king and her to you; for I know your grace's hearty concern for the church; but I dare not speak of it even here, or write of it to any body else for several reasons; only my lord of London knows somewhat of it.

And as I thus beg your lordship's pardon so I must humbly also beg your commands and directions as to my management either in this affair or in any thing else, in which the good of the church is concerned, which I can truly, and with a safe conscience, say, is much dearer to me than my life itself, or any thing else I have in this world; and therefore your grace may be sure, I will not fail (by the blessing of God) to make all the good impressions that I shall be able; but your grace's commands and assistance will enable me to do much more; and I know that any thing will be much the better taken also as coming from your grace. To this purpose I humbly crave leave to beg of your grace, that you will be pleased sometimes to write to her highness. I am from herself assured, that she will take it very well, and when your grace thinks fit to write to her, if you will please to give your letter to Dr. Tenison, he will frequently find a private hand by which to send it enclosed to me. And if your grace doth take some notice to her of her carriage in this affair, as I have related it, it will I believe, be very acceptable. I again most humbly beg your grace's pardon for this long letter, and for my bad writing, for the gentleman that is to carry it, is in so great haste that I have not time to transcribe it. I bless God their highnesses are in good health, and beg your grace's prayers to God for them, and your blessing on your grace's most humble and obedient servant,
WILL. STANLEY.

Another Letter from the same to the Archbishop.

Houslaerdyke, May 31 (June 10), 1688.

May it please your grace;

I hope your grace did pardon the trouble which I gave you of a letter since I returned hither out of England, and in confidence of that I having the opportunity of a friend going for London, whom I can trust, presume to acquaint your grace with how great satisfaction the news was received here of the petition, which your grace and your brethren the bishops presented to his majesty. All men here, that love the church or reformation, do rejoice in it, and thank God for it, as an act very prudent and

resolute, and every way becoming your places and characters; but especially our excellent prince and princess were so very well pleased with it, (notwithstanding what the marquis of Abbeville, the king's envoy here, could say against it) that they have both vindicated it before him, and given me a command in their names to return your grace their hearty thanks for it; and at the same time to express their real concern for your grace and all your brethren, and for the good cause in which you are engaged; and, I dare say, they are not only highly satisfied with your grace's conduct, but reckon themselves particularly obliged by your grace's so steadily maintaining the church; and your refusing to comply with the king is by no means looked on by them as tending to disparage or depress the monarchy; for they reckon the monarchy to be really under-valued and injured by all unreasonable and illegal actions, though never so much pretending to enhance it. Indeed we have great reason to bless and thank God for their highnesses steadiness, in so good a cause, and their affection towards us. They do give us all the comfortable prospect that we ourselves can desire. And I pray God in his good time to answer and fulfill all these our hopes in them. I will not trouble your grace with news from hence; only I cannot but acquaint your grace here hath lately been discovered a great design against the life of the prince by poison. The person, who was to have done it, discovered it, and produced the poisons, but he could not produce the person that hired him; for he would never tell him his name, nor meet him in any house. He gave him some money in hand, and promised him more, if he would but first poison his landlord where he lodged, and then he should have much more for doing the same to the prince; and because this person delayed to do either, he was by an unknown hand stabbed here in the fair time, but is not dead. We discourse but little of it, but it is most true, that there was such a wicked design, which I thank God is defeated; and I pray God for ever to blast all designs against their highnesses, and to make them great and lasting blessings to our church and nation. To which purposes I humbly beg your grace's prayers to God for them, and your blessing on your grace's most humble and obedient servant,

WILL. STANLEY.

MATTER OF FACT: by the E. of CL——.

I. *Concerning the King's Dispensing Power.*

December 26th, 1662, king Charles 2 set forth a Declaration to all his loving subjects, containing an indulgence (though far less than hath been since granted) to dissenters; there being then no other test upon any sort of them, but the oaths of allegiance and supremacy. At the opening of the next session of parliament, February 18th, 1662, the king in his speech explained his meaning in his said declaration, lest (as he said) "some should mistake him therein." In that speech he used these words; "I

could heartily wish, I had such a power of indulgence, &c.:" whereby it is manifest, that he knew he had no such power by his prerogative.

The house of commons coming to consider of that speech, fell upon the questioning the legality of that declaration: and after long debates, upon February 28th presented an address to the king, containing the several reasons against that indulgence; and averring positively, "that the laws of uniformity, then in force, could not be dispensed with, but by act of parliament." This address was received by his majesty very graciously; as appears by his answer, which is in print, with the address and reasons.

While this was doing in the house of commons, a bill was brought into the house of peers, intituled, "An Act concerning his majesty's power in ecclesiastical affairs." The scope of it was to enable the king to dispense with the act of uniformity, and to give indulgence to dissenters. The cause of the bill is thus laid down in the preamble: "considering that this indulgence, how necessary soever, cannot be dispensed by any certain rule, &c. and his majesty being the best judge, when, and to whom this indulgence is to be dispensed, and as may be most consistent with the public peace, and without just cause of offence to others, and to the end his majesty may be enabled to exercise it with universal satisfaction, be it enacted. &c.:" This bill was read the first time February 23d. It was after read a second time, and committed. But whosoever hath the curiosity to look into the journals of that house, will find, that though the committee sat several times, they made very little progress in it, and that at last it died away there, without any report made to the house. By this proceeding it seems very clear, both that the king had then by law no such dispensing power; and that the parliament were not then inclined to grant him any such power.

After this all things continued quiet for above nine years. But March 15th, 1671, the king set forth another Declaration of Indulgence, much fuller than the former. The parliament met not till February 4th, 1672, (which was near a year after the declaration was published.) The king, in his speech at the opening of that session, speaking, (among other things) of his declaration, was pleased to say: "Having said this I shall take it very ill to receive contradiction in what I have done; and I will deal plainly with you; I am resolved to stick to my declaration." The house of commons, February 19th, made an humble address to his majesty; wherein they inform him, "that penal laws in matters ecclesiastical cannot be suspended but by an act of parliament." The king returned an answer February 24th, in which he says, "that he is much troubled, that that declaration, which he put out for ends so necessary to the quiet of his kingdom (and especially in that conjuncture) should have proved the cause of disquiet in his house of

commons, and given an occasion to the questioning of his power in ecclesiastics: which he finds not done in the reigns of any of his ancestors, &c." Neither doth he pretend to the right of suspending any laws, "where the properties, rights, or liberties of any of his subjects are concerned, &c." This answer of his majesty was not satisfactory. The house replied, February 27th, in another address, in which they say, "that the power to suspend penal laws in matters ecclesiastical was never claimed, nor exercised by any of his majesty's predecessors." It is fit here to observe, that in this debate in the house of commons (which lasted above eight hours) all the lawyers in the house (among whom were several of the king's counsel) were commanded to deliver their opinion, as to the legality of the declaration: which every one of them did distinctly by himself, and declared, that penal laws could not be suspended, but by act of parliament.

While these things were transacting in the house of commons, the king acquainted the house of peers, what had past between him and the commons. The lords did little more thereupon, than appoint a committee to consider of what his majesty had communicated unto them. For while they were considering of it, the house of commons, taking notice of the great concourse of papists to town, and that many of them were got into employments in the army, prepared an address to be presented to the king, against the growth of popery: which they sent up to the lords, March 4th, desiring their concurrence to it. Their lordships granted it; and March 7th both houses presented it to his majesty; and his majesty, March 8th, went to the house of peers, sent for the commons, and made a short speech to both houses; wherein he told them, "that he freely and readily agreed to the address, they presented to him the day before, and would take care to see it performed accordingly:" adding farther these words; "if there be any scruple yet remaining with you, concerning the suspension of penal laws, I faithfully promise you, that what hath been done in that particular, shall not for the future be drawn either into consequence or example." And after his majesty was gone out of the house of peers, the lord chancellor acquainted the lords (and Mr. secretary Coventry did the same in the house of commons) that the night before the king had caused the original declaration of indulgence under the great seal to be cancelled; of which he, and several other lords of the council were witnesses.

Thus ended this unhappy dispute between the king and his parliament, which occasioned many warm debates; and harsh and angry things were said on both sides, that had been much better avoided. This declaration, together with the impertinence of the Papists (to give it no worse name) gave occasion to the parliament in this very session to pass that act, wherein the first test was imposed on all persons who had any office, &c.

From what hath been said, it is (I think) very clear, that to this time the king had no power to dispense with penal laws in matters ecclesiastical. For in February, 1662, his majesty owned that he had no such power; and we all know, that the parliament have past no law since to enable him to exercise that power. How therefore the present judges came to be so far enlightened, as to give their opinions so positively, that the king may by law dispense with the act, whereby the last test is imposed (without which no man can sit in either house of parliament, or enjoy any office); and also with all other penal laws, even where the property of the subject is concerned (which his late majesty disclaimed the pretending to); I say, how these judges came to so fix a resolution in this great point, may be fit one day to inquire.

The Declarations, Speeches, Addresses, and Replies, above-mentioned, are all in print.

II. Concerning the Act imposing the Test, 1678.

The bishop of Oxford, in his late book, intitled, "Reasons for abrogating the Test," &c. in the very entrance of it, lays down this assertion; "That the test imposed upon all members of parliament, October 30th, 1678, ought to be repealed for several reasons."

First, "Because it doth not only diminish, but utterly destroy the natural right of peerage; and turns the birthright of the English nobility into a precarious title: so that, what was in all former ages only forfeited by treason, is now at the mercy of every faction, or every passion in parliament."

Answer. How the bishop handles the matters of transubstantiation and idolatry, I take not upon me to judge: but as to what concerns the house of peers, and the transactions there, I will venture to say, he is grossly mistaken in matters of fact; which shews at least want of care to be well informed. Had he looked into the printed statute-book he would have found, that the act he mentions, past November (not October) 30th, and had he been conversant in the journals of the house of peers (which he ought to have studied, before he had taken upon him to write of their affairs) he might have found, that lords have been deprived of their places in parliament, and the privilege of voting there for less crimes than treason; and that even by judgment of the house of peers only, without an act of parliament. The lord viscount St. Albans, lord chancellor, and the earl of Middlesex, lord treasurer, temp. Jac. 1. were not only deprived of their offices, and made incapable of ever holding any other, but also of ever sitting in parliament; and all this by the censure of the house of lords only: and in elder times, in the reign of Henry 4, the duke of Aumarle, and others. And to come nearer our own time; how often have the lords made orders, (scarce a session since 1660, in which they have not) that all the members of that house should take the oath of allegiance?

and accordingly all the peers, even the Roman Catholic, have taken that oath more than once since his late majesty's restoration; even his present majesty too, when duke of York. There is no question but that every court may prescribe rules to all the members of that court; much more the supreme court, the house of peers, who frequently have imprisoned and suspended their members from sitting and voting there, for no other offence than contempt: one eminent example whereof might be given, which happened a few years since, but that I am willing to avoid reflections upon passages which 'tis better to forget.

And if peers may be deprived of sitting and voting in parliament by judgment of the house of lords only; certainly he must be very audacious who presumes to question what the supreme authority of the nation (king, lords, and commons) have done by act of parliament: especially it being no more (after all) than to provide a security, that those who are of a different religion from that established by law, should not be in a capacity to destroy the religion of the country. If the bishop would but view the late edicts which have been published in France to suppress the reformed religion there, where the Protestant peers had as much right to sit in parliament as the Roman Catholic peers can pretend to here: or if he would have looked into the history of Sweden, and seen what security the legislative power of that kingdom hath provided for the maintaining of the religion there established, he would not have thought it so very strange, that our king and parliament should make new laws for the support of the religion of the country, when they find it like to be invaded, and disturbed by those who make it their constant business to undermine it.

'Tis very true (what he says) that in the act for the first test, 1673, the rights of peerage are secured to the lords by proviso. And if he had well minded that other act, 1678, with which he is so much displeased;

1. There is no right of peerage at all invaded, but that of sitting and voting in parliament, till they take the oaths, and subscribe the declaration: which so soon as any lord will perform, he may take his place in parliament, though discontinued for some time; for a writ is sent him every time a parliament is summoned. And that he looseth no other privilege of peerage, is, I think, very plain, by the trial of the late lord viscount Stafford; who, notwithstanding this act, was tried by his peers according to his undoubted right; which clearly shews what is and what is not taken away by this act. But

2. For that which is taken away, sc. the right to sit, and vote (which he calls the birth-right, and natural right of peerage), he should have considered the reason of doing so, given in the preamble of that act: viz. "Forasmuch as divers good laws have been made for preventing the increase and danger of Popery in this kingdom, which have not had the desired

effects, by reason of the free access which Popish recusants have had to his majesty's court, and by reason of the liberty which of late some of the recusants have had, and take to sit, and vote in parliament, &c." Is it not plain hereby, that the wisdom of the nation thought it necessary for the security of religion, and the government, that Popish recusants should be debarred from coming to court, and sitting in parliament? And these are all the rights of their peerage, that are not so much taken away, as suspended, till they conform.

To confirm this first reason for abrogating the test, the bishop insists much upon a debate in the house of peers, 1675, when the test, or oath of loyalty (as he calls it) was brought in there, where he affirms several things.

First, "That the matter of the test itself (viz. that 'tis not lawful upon any pretence whatsoever to take up arms against the king, and by his authority, against his person) was such as nobody could except against; but the only debate was, Whether the proposing this as a qualification for a right to sit in parliament, did not intrench upon the privileges of that house, and the fundamental right of peerage? which (he saith) was thrown out by an unanimous vote of the house, April 21."

Secondly, He confesseth, "That the question being put, it was at first resolved in the negative: but that some lords (sc. 23 in all) did enter their dissent against this vote, as a thing unprecedented in former times; as the highest invasion of the liberties and privileges of the peerage; and most destructive of the freedom, they ought to enjoy, as members of parliament: because the privilege of sitting and voting in parliament is an honour they have by birth; and a right so inherent in them, and inseparable from them, that nothing can take it away, but what by the law of the land takes away their lives, and corrupts their blood."

Thirdly, "The debate, he saith, was kept up many days, but that it was at last resolved, April 30th, That no oath should be by this bill imposed." And,

Fourthly, "That a general order was past, *nemine contradicente*, to be added to the standing order of that house, That no oath shall be imposed by any bill, or otherwise upon the peers, with a penalty in case of refusal to lose their places, and votes in parliament, or liberty of debates therein."

Answer. This bill was intituled, "An Act to prevent the Dangers which may arise from Persons disaffected to the Government:" and the oath in it contained (beside the clause he mentions) another, obliging them to abjure all endeavours to alter the government in the church. It was brought in April 15th, and read the first time; and the second time April 20th; when, and for several days after, there was a very great and long debate, Whether

the bill should be committed, or not; so that it was not committed till April 26th. In the mean time, April 21st, there was a collateral debate, Whether the very proposal of this oath with such a penalty were a breach of the fundamental right of peerage, and so the bill to be cast out: which was resolved in the negative by 87 lords; 23 dissenting, and entering the protestation, he mentions. So that there was nothing cast out by the unanimous vote of the house, April 21st, as the bishop grossly mistakes, for want of perusing the journals of the house. But the same day the peers resolved to proceed upon the main point, Whether the bill should be committed: and April 26, the question being put, it was committed to a committee of the whole house. Against this the former lords entered a second protestation, with a new reason, that it strikes at the very root of government; to which freedom of votes and debates is necessary in those that have power to make, or alter laws; whereas this bill obliges to abjure all endeavours to alter the church government, without regard to any thing, that prudence in government, Christian compassion to Protestant dissenters, or the necessity of affairs at any time may require. But the majority of the house were much dissatisfied with the proceedings of these dissenters: and therefore April 29th, the question being propounded, whether the reasons given in that protestation of April 26 did reflect upon the honour of the house, and were of dangerous consequence; it was resolved in the affirmative: against which several lords entered their dissents, asserting the right of protesting with reasons. For all this the committee of the whole house proceeded upon the bill April 30th, and May 3d; and past these two preliminary orders (to which the house agreed),

1. "That no oath shall be imposed by any bill, or otherwise upon the peers, with a penalty in case of refusal to lose their places, or votes in parliament, or liberty of debates therein; and that this be added to the standing orders of the house."

2. "That there shall be nothing in this bill, which shall deprive any member of either house of their just, ancient freedom, and privilege of debating any matter propounded, or touching the repeal or alteration of any old, or the preparing any new laws, &c. &c." Now the dissenters thought they had gained their point; but the business was brought about again; and the major part of the house (notwithstanding the unanimous laying aside the oath with the penalty in the bill mentioned) did upon the same May 3d (when the second preliminary order was made) pass the first enacting clause, "That all and every person, and persons, as well peers as commoners, that do, or shall hold, or enjoy any beneficial office, or employment, ecclesiastical, civil, or military; or be a privy councillor, or justice of peace; or (as they added the next day, May 4th) have or shall have right to sit and vote in either house of parliament, &c." Against this

vote also several lords entered their dissent, as being contrary to the two orders abovementioned, which were past as previous directions to the committee of the whole house, to whom the said bill was committed; and insisted that the proviso in the late act (sc. 1673) for preventing dangers from Popish recusants, might be added to this bill, for the preserving the privileges of the peers, which the house had not been pleased to admit of. Thus it appears, that the peers had finally ordered, that an oath should be taken by the peers: but what the penalty should be in case of refusal (though there were many adjournments of the committee from hence till the 4th of June) was not determined: and though several penalties were moved at the committee, yet nothing was resolved on, nor any report made to the house after May 7th. And in the mean time, some unlucky disputes happening between the two houses about other matters, the parliament was prorogued June 9th till October, and so the bill fell, and was never resumed.

This is in short the narrative of the matter of fact, which past then in the house of peers upon this occasion out of their own journals. Whence it appears,

First, that it was then the sense of that house (23 only dissenting) that the imposing of an oath upon the lords, even with the penalty of losing their places and votes in parliament in case of refusal, is not a breach of the fundamental rights of peerage. How the two orders of April 30th, and May 3d (which lay aside the oath, and the penalty) came to be gained, and what was the project and intrigue of these transactions throughout, would carry me too far into the history of that time. It is enough against the bishop, that the oath and penalty were presently resumed, and proceeded upon. And,

Secondly, These very lords, or some of them, seem to have altered their opinion herein afterward; for the bill for the test 1678, (at which the bishop is so much offended) past almost unanimously: 7 lords only (besides the then duke of York) dissenting, and they all papists. And I cannot think the dissenting peers will be pleased, that his lordship should question or arraign them (as he doth p. 4th) for changing their opinion, and consenting to the test bill 1678; they being sufficient judges of their own rights and honours, without his lordship's assistance.

Thirdly, As to what was added to the standing orders of the house, it is in fine no more than an order; and the peers are masters of their own orders, and may observe, or set them aside, as they see good. One reason, which the 23 lords gave, why they dissented to the bill, was to preserve their ancient privilege of altering old, and making new laws: and shall the peers be denied the freedom to set aside their own orders? This very order (which the bishop takes to be so obligatory) was often urged in 1678, and yet almost unanimously set aside, and even by these very dissenting lords too.

II. The bishop's second reason for the repealing the test is, because of its "dishonourable birth and original; it being the first born of Oates his plot, &c."

Answer. Though Oates hath been since detected, and proved a most abominable cheat, and impostor; I could wish, that what hath happened since did not make several things, which he then related, look like truths now, which many good men did not then believe. Nay, though Oates had never been, doth it therefore follow, that there was no Popish plot? Certainly no man reads Mr. Coleman's Letters, but must be convinced, that there was a plot laid (before Oates appeared) to extirpate the northern heresy (as he called it), and that two of the French king's confessors at least were privy to it. Whoever looks into the transactions of parliament for 8 or 9 years before 1678 (and especially 73, 4 and 5) and sees how much time was spent in modelling laws for the security of the Protestant religion, and in contriving methods for the government, in the case of a Popish successor; will not sure impute the original of those endeavours to Oates's perjury. If the bishop would look into the Journals of the house of peers, he would find, that November 9th, 1675, a bill was brought from the house of commons, intituled, "An Act for hindering Popish recusants from sitting in either house of parliament," (certainly nothing akin to Oates, or his plot) which probably had past that session, but the parliament was in the same month prorogued to February 1676; and whether the proceedings upon that bill might not occasion that long prorogation, I leave to inquiry. What reasons induced the parliament 1673 to pass the first test act, it would not perhaps be very agreeable to inquire: but sure it had nothing to do with Oates's plot. They that knew the state of the court, and circumstances of affairs at that time, cannot doubt but that it was to keep those out of offices and employments, who by obtaining them would be in a capacity to suppress the Protestant, and introduce the Romish religion. And if the Papists had modestly submitted to that act, and not occasioned fresh jealousy by frequenting the court, and being too busy there, in all probability no new laws would have been made against them. Upon the whole, I do not see (for all the bishops' arguments) that the laws we are possess of, for the security of our religion, should be accounted odious, and repealed, because Oates is proved an impostor: for long before he was thought of, all papists were by several laws excluded from all offices in the government. And whether this be a proper time to give them power to destroy the Protestant religion, (for no man can doubt, if they had the power, and the laws were out of the way, they would think themselves bound to do it) a parliament (when the king thinks fit to call one) will be the best judge.

III. The bishop's next reason, why he would have the test abrogated, is because of

the "incompetent authority, by which the law was enacted."

Answer. His lordship having as (he thinks) settled the ecclesiastical polity; sawcily takes upon himself to question the powers and authorities upon earth. He may as well pretend, that the parliament had not a competent authority to enact the oath of allegiance. For I have heard many Papists profess, that the main reason, why they cannot take the oath is, because the parliament hath not a competent authority to determine what is impious, or heretical; which that oath doth. Though I will not argue with his lordship's divine verities, yet I am satisfied in myself, that I may take the oaths, and make the subscriptions appointed by law, without intrenching upon the authority of the church. But, however, he who can content himself in his private station, without the ambition of making a figure in the state, incurs no penalty from either of the acts, nor is obliged to take the oaths, or tests. But he thinks he may say any thing, because no authority is like to question him, but a parliament: and therefore to that I leave him. When that shall sit, he may perhaps know, whether they will allow him to question their authority in the legislature: I am apt to think, that neither lords nor commons will sit down quietly under the severe and foul language he hath given them. He may then be taught, that though he may refuse all freedom in debates about any bills, which are preparing; yet when they are past into laws, (the royal assent being given them) it is dangerous to arraign them; the king's laws being the life of the government.

IV. His last reason for repealing the test is, "because of the uncertainty and falsehood of the matter contained in the declaration itself."

Answer. What is the true notion of transubstantiation, and idolatry, according to the church of England, I will leave to be debated with the bishop by abler persons, (who I doubt not) will take him to task in these particulars. However we will not learn this of him, who was born of fanatical parents, and was educated in their principles: and though he hath since for preferment swallowed all oaths, and tests, and hath written with great sharpness against popery, yet hath he not shewed himself to have the true principles of the church of England. But admitting this, I shall only shew him here some few more of his mistakes in matter of fact, and correct them: which was my main design.

1. He seems, p. 9th and 10th, to take little Archtophel (as he calls him, meaning the E. of Shaftsbury) to have been the infamous author of this test: but they who understand the affairs of that time much better than the bishop can pretend to do, know it was otherwise. The bill was sent up from the house of commons; being but the reviving of that before mentioned, which they sent up once before in November 1675; as thinking still, that it was necessary for the preservation of the government. If Shaftsbury concurred in it, it was only because

it came from the house of commons; he being then very industrious in his courtship to that house.

2. As to what he saith p. 10th: "That the design of the test was to pursue, and hunt down the heir of the crown; and in order to that, to strip him of the guards of his most faithful friends; he forgets that, by particular proviso, nothing in that act was to extend to the duke of York; and if the guards of his most faithful friends (which he mentions) were not papists, the act meddled not with them; and if they were, he was stript of them by the test imposed 1673."

3. Who were the two fathers, or rather midwives (as he calls them p. 11th) of the first test in 1673, doth not appear by the journals of the house of commons; so that his lordship can only have been told, that they were "the two famous burgesses of Oxford." And in that he may have been misinformed in the whole, as I am sure he is in part. For the alderman, he mentions, was not then a member of parliament; and it can be made appear, that the recorder of Oxford, who was one of their burgesses, never opened his lips in that matter.

4. He tells us, what was objected against the "church of England by the Roman divines of Cologne in his majesty's presence; and that thereupon Dr. Cosins (then dean of the chapell) by his majesty's command wrote a discourse to vindicate the church of England, and to give account of its sense concerning the true real presence." But there are persons yet living, who know, that there never were any disputes before the king, while he resided at Cologne, by any of the Roman divines; that Dr. Cosins was never dean of the chapell royal, nor ever at Cologne (but remained at Paris, to take care of the queen mother's protestant servants), and that if the bishop had looked upon Dr. Cosins's history of transubstantiation (which I suppose is the discourse he means) he would have found that it was written at Paris, long before the king's being at Cologne.

Audacious attempts of Popish Seducers in King James's reign.

Books and pamphlets prejudicial to the church are sold on every stall, cryed about by hawkers in the streets as commonly as Gazetts, thrown or brought into houses, or sent by penny post bundles, such as, the Touchstone of the reformed Gospel: the Translation of the Mass: the Papist misrepresented: the Exposition of the Bishop of Meniv.

Papists bring papers into coffee houses and plead the cause out of them as out of so many briefs: thus did a new convert in a coffee house in Covent Garden. A priest discoursed publicly in such a house in a neighbouring parish about invocation of saints.

Some priests of foreign ministers catechise the children of the English in English, and by way of sermon expound an hour in an afternoon, and reflect upon our church.

VOL. XII.

Thus have done father Jacob and another father at the resident's of Florence.

When the churchmen come to dying persons they often find that priests or lay-papists have been tampering with them. This was the case of Mr. J. M.

Sometimes priests come in disguise, and under the pretext of administering physic. Thus did one nigh Charing Cross, who came to a man, now dead, with a glass of medicinal liquor.

Papists, both of the laity and clergy, offer arguments to the passengers in hackny coaches to Windsor, and other places, and perhaps Dr. B. may call to mind the beginning of his own unacceptable discourse to a military person in his coach from Islington.

Papists deal with children, and sometimes forbid them to read the Bible in our translation: so they dealt with the daughter-in-law of one Mrs. Hall about sixteen years old.

Sometimes they suggest great hopes of recovery to the sick, upon reconciling themselves to the Church of Rome: so they did in the case of a sick woman, not far from Somerset House, in great pain with the stone.

Some papists pretend kindred, where they are not akin; and under this cover make visits, and enter into discourse about religion, as in the case of a lady in Covent-Garden.

Priests and others offer to pregnant youths preferment at Doway, or St. Omers; as in the case of a student in King's college.

Some priests christen children, even where the parents are against it; ex. gr. Dan Maniato, servant to the resident of Florence, came with a priest to the house of Francis Herd, of Soho, (whose wife the said Daniel had abused) and he christened the said child, without any leave, and to the great grief of the said Francis Herd, and without any notice there taken of the said Maniato's violence and adultery. It is true, this is a last year's story, and heard of formerly, but not so confirmed to me as in this week.

I suppose you do not expect, that I should tell you of every thing that I have heard or known of this nature, especially of such relations as have been received under the seal of secrecy. Enough hath been said to satisfy you that our churchmen do not unnecessarily break silence. I am, &c. O. O.

The Case of reading the 'Declaration for Liberty of Conscience,' briefly stated in four Propositions: [by Mr. Jonas Proast, Chaplain of All Souls, and afterward Archdeacon of Berks.]

1. The intent of the Declaration itself is, that men may use such a liberty, in matters of religion, as cannot be used, without violating the laws of God and this kingdom.

2. The intent of the order for the clergy's reading the declaration is, that the declaration may have the fuller effect, in the more general use of that unlawful liberty.

3. Therefore, in the king's intention, and according to the most natural construction of the thing itself, the clergy's reading the declaration is a direct promoting the use of that unlawful liberty.

4. Therefore the clergy cannot lawfully obey the order for their reading the declaration.

Copy of a Letter in Archbishop Sancroft's own hand.

My lord; This is only in my own name, and in the name of some of our brethren now here upon the place, earnestly to desire you, immediately upon the receipt of this letter, to come hither with what convenient speed you can, not taking notice to any that you are sent for. Wishing you a prosperous journey and us all a happy meeting,

I remain your very loving brother.

Two Letters to the Archbishop from the Bishop of Winchester [MEWS.]

May it please your Grace;

Though I was to-morrow to begin a course of phys, yet I shall, God willing, come part of the way towards you: and am your obedient son and servant,

P. WINCHESTER.

Farnham Castle, May 13, 1688.

May it please your Grace;

The wounds in my hand, which have of late been uneasy to me, have this night afflicted me to that degree, that I am forced to let blood, and so am made at present incapable for to bear the motion of a coach. What ease I may receive by this I cannot yet tell, though it hath formerly been successful. But it is very uneasy to me that I am disappointed in my intentions of waiting on you. I beg your pardon and prayers for your obedient son and servant,

P. WINCHESTER.

Farnham Castle, May 14, 1688.

Letter to Archbishop Sancroft from John Tillotson, D. D. Dean of Canterbury.

May it please your Grace;

Though I am very sensible, how unfit I am to advise in difficult cases, yet I could never forgive myself, if I should be wanting to our religion and church in any thing, wherein your grace shall think I may be in the least serviceable; and therefore I shall not fail, God willing, to wait upon your grace to-morrow morning at the hour appointed. I humbly beg your grace's blessing, and remain, my lord, your grace's, &c.

J. TILLOTSON.

Letter to the Archbishop from the Bishop of Landaff [BEAW.]

May 27, 1688.

May it please your Grace;

There came to my hands from my brother of Gloucester, Friday night last, a copy of a petition, delivered to his majesty by six bishops

of your province, on behalf of your graces themselves, and of others their absent brethren.

My lord, I was one of those absent; but I was absent in body only, my soul went along with them. I wholly concurred with them with my heart, and I now send my hand to bear testimony thereto.

Because I find I cannot be back soon enough in my diocese (whither I am hastening) to give a stop to the distributions myself, I have ordered a messenger to be dispatched with all speed to my chancellor (who is upon the place) with my commands to him, to detain what declarations shall be sent, and I make no doubt but to be obeyed.

God preserve your grace; grant us all to be of one mind; and to dare to do well in evil times. This is the prayer of your grace's most humble and dutiful servant,

W. LANDAFF.

Letter from the Bishop of Worcester [THOMAS.]

Worcester, June 3d. —88.

Worthy Sir;

I thank you for your congratulating my recovery, which as yet is so very infirm I rather creep than go. I pray present my dutifully devoted observance to my lord's grace of Canterbury. I pray God direct and prosper his steerage of the church of England in these tempestuous times. In a cordial compliance with his grace's pious conduct in the late petition presented to the king, I have retained in my custody the packet of the printed copies of the royal declaration of indulgence, which I could not transmit to the clergy of my diocese committed to my pastoral charge (*salva conscientia, salvo honore ecclesiae Anglicanae*). It is a piercing, wounding affliction to me to incur his majesty's displeasure, to be misinterpreted guilty of the least degree of disloyalty or ingratitude (which my soul abhors) towards my inexpressibly obliging master and benefactor, patron and sovereign, whose special mandate I have received in the concern of the indulgence imparted to me by the lord bishop of St. David's; wherein nothing could divert or slacken my intire submission and utmost conformity, but my dread of the indignation of the King of Kings, to whom, being near the brink of the grave, I must shortly give an account of my managing of the episcopal station (wherein God be merciful to me), I apprehend it a duty incumbent on me, indispensibly strict, to be a skreen to my clergy, to endeavour to secure them from sins and perils, not to lay trains for either, by recommending the publication of that to their parishioners, wherein my own judgment is abundantly dissatisfied, and theirs also.

I resolve by God's gracious assistance to suffer the greatest temporal evil of distress rather than to act or promote the least spiritual evil of guilt: I rest your faithful friend to serve you,

W. WORCESTER.

Letter from the Bishop of Carlisle [SMITH] to the Bishop of Ely [TURNER.]

Rose Castle, June 4, 1688.

My very good Lord,

Your kind letter of the 26th past came safe to my hands on the 31st, for which I return your lordship my most humble thanks, and do account myself very much obliged to you for it; it having acquainted me with many particulars whereof till then I was wholly ignorant. The petition itself had been sent me some few days before, with which I was so very much pleased and satisfied, that I immediately resolved to take the first opportunity of declaring my assent to it, and my very hearty concurrence with your lordships in it. I desire you will be pleased to let me know in what form you would have me do it, for at present I am at a loss, in regard to the title of your petition (running for the province of Canterbury only) seems to have shut me out, at which I must confess I did (at the first reading of it) somewhat repine. With all this, my lord, I beg you will please to acquaint my lord's grace, to whom I present my most humble duty, and my very humble service to yourself, and the rest of the seven, remaining ever (my very good lord) your lordship's most affectionate brother and most faithful servant,

THO. CARLIOL.

My lord, I have disposed of your letter, so as your lordship directed, no eye having seen the inside of it but my own.

Yesterday, your lordship knows, was the day appointed for the first reading of the declaration, but I do not believe it was read by any one man of this diocese.

When your lordship shall give me the honour of another letter, be pleased to put it under a cover, directed to Mr. John Nicholson, at Rose Castle, near Carlisle, Cumberland.

The PETITION of some of the Bishops to his Majesty [K. JAMES 2.] against distributing and reading his Declaration for Liberty of Conscience; with some proceedings thereupon.

On Friday, May 18th, 1688, a Petition to the king was formed at Lambeth, by William lord archbishop of Canterbury, and several suffragan bishops of that province; (viz. Henry lord bishop of London, William of St. Asaph, Francis of Ely, John of Chichester, Thomas of Bath and Wells, Thomas of Peterborough, and Jonathan of Bristol;) in the presence, and with the consent of John Tillotson, D. D. dean of Canterbury, Edward Stillingfleet, D. D. dean of St. Paul's, Simon Patrick, D. D. dean of Peterborough, Thomas Tenison, D. D. vicar of St. Martin's in the fields, Robert Grove, D. D. rector of St. Andrew's Undershaft, and William Sherlock, D. D. master of the Temple. The tenor of the Petition was as followeth:

[Here follows the Petition, see p. 239.]

In the evening of the same day, the petition being finished, all the subscribers (except the archbishop, who had been forbidden the court almost two years before,) went over to Whitehall to deliver it to the king. In order thereto the bishop of St. Asaph went first to the earl of Middleton, (principal secretary) in the name of all the rest, to desire his assistance for the introducing them to his majesty: but he had been sick for a fortnight before, and so confined to his chamber. Then St. Asaph (his brethren staying at the earl of Dartmouth's house) went, and made the like application to the earl of Sunderland, desiring him to peruse the petition, and acquaint his majesty with it, that he might not be surprised at the delivery of it; and withal to beseech his majesty to assign the time and place, when and where they might all attend him, and present their petition. The earl refused to inspect the petition, but went immediately, and acquainted the king with their desire; and they were presently thereupon brought to the king in his closet within his bed-chamber; where the bishop of St. Asaph with the rest, (all being upon their knees,) delivered their petition to his majesty. The king was pleased (at first) to receive the petitioners and their petition graciously, and upon the first opening of it to say, this is my Lord of Canterbury's own hand: to which the bishops replied, yes, Sir, it is his own hand. But the king, having read it over, and then folding it up, said thus, or to this effect.*

King. This is a great surprise to me: here are strange words. I did not expect this from you. This is a standard of rebellion.

St. Asaph (and some of the rest) replied, that they had adventured their lives for his majesty; and would lose the last drop of their blood, rather than lift up a finger against him.

King. I tell you this is a standard of rebellion: I never saw such an address!

Bristol (falling down on his knees) said, Rebellion! Sir, I beseech your majesty, do not say so hard a thing of us. For God's sake do not believe, we are, or can be guilty of a rebellion. It is impossible, that I or any of my family should be so. Your majesty cannot but remember, that you sent me down into Cornwall to quell Monmouth's rebellion; and

* The account commonly reported of what passed between the king and the bishops upon their delivery of the Petition is that given by Kennet, as follows:

"Upon the reading of it the king startled, and shewed himself to be very much incensed, and made this answer in a very angry manner: I have heard of this before, but did not believe it. I did not expect this from the church of England, especially from some of you. If I change my mind, you shall hear from me; if not, I expect my command shall be obeyed. The bishops replied, We resign ourselves to the will of God; and then immediately retired."

I am as ready to do what I can to quell another, if there were occasion.

Chichester. Sir, we have quelled one rebellion, and will not raise another.

Ely. We rebel, Sir! we are ready to die at your feet.

Bath and Wells. Sir, I hope you will give that liberty to us, which you allow to all mankind.

Peterburgh. Sir, you allow liberty of conscience to all mankind: the reading this declaration is against our conscience.

King. I will keep this paper. It is the strangest address which I ever saw: it tends to rebellion. Do you question my dispensing power? Some of you here have printed, and preached for it, when it was for your purpose.

Peterburgh. Sir, what we say of the dispensing power refers only to what was declared in parliament.

King. The dispensing power was never questioned by the men of the church of England.

St. Asaph. It was declared against in the first parliament called by his late majesty, and by that which was called by your majesty.

The *King* (insisting upon the tendency of the petition to rebellion) said, he would have his declaration published.

Bath and Wells. We are bound to fear God, and honour the king. We desire to do both: we will honour you; we must fear God.

King. Is this what I have deserved, who have supported the Church of England, and will support it? I will remember you that have signed this paper. I will keep this paper; I will not part with it. I did not expect this from you; especially from some of you. I will be obeyed in publishing my declaration.

Bath and Wells. God's will be done.

King. What's that?

Bath and Wells. God's will be done, and so said Peterburgh.

King. If I think fit to alter my mind, I will send to you. God hath given me this dispensing power, and I will maintain it. I tell you, there are seven thousand men, and of the Church of England too, that have not bowed the knee to Baal.

This is the sum of what passed, as far as the bishops could recollect it; and, this being said, they were dismissed.

The petition was after approved and subscribed by divers of the absent bishops: sc. by Henry London, May 23rd, Will. Norwich, May 23rd, Robert Gloucester, May 21st, Seth Sarum, May 26th, William Landaff, May 27th, William Worcester, June 3rd, Peter Winchester, May —, Tho. Exon, May 29th.

Thus things remained for some time after: and though in the mean while many, and very different methods of severity intended against us were spoken of in the talk of the town, yet nothing seems to have been resolved on;

at least nothing was done till Sunday May 27th. Late in the evening that day one of his majesty's messengers served the archbishop of Canterbury with the following summons.

"*Locus Sigilli.* Robert earl of Sunderland, baron Spencer of Wormleighton, president of his majesty's most honourable privy council, principal secretary of state, and knight of the most noble order of the garter, &c.

"These are in his majesty's name to require William lord archbishop of Canterbury, to appear personally before his majesty in council upon the eighth day of June next, at five in the afternoon, to answer to such matters of misdemeanor, as on his majesty's behalf shall then and there be objected against him: and you are hereby required to summon the said William lord archbishop of Canterbury to appear accordingly: and for so doing this shall be your warrant. Given at the court at Whitehall the 27th day of May 1688.

"SUNDERLAND P."

"To sir John Taylor, one of his Majesty's Messengers in ordinary."

So many of the petitioners as were in town, (viz. the bishops of Ely, Chichester, and Peterburgh) were at the same time served with the like summons by other of the king's messengers; and the like sent after the rest, who were gone home into their dioceses.

Letter to the Archbishop from the Bishop of Norwich [LLOYD.]

May it please your Grace; June 1, 1688.

I should have waited upon your grace had I not been harrassed with the new distemper (as its called) and thereby been confined to my chamber for these two days last past.

I was last Wednesday with Mr. Henry Pollexphen, who promised to appear for your grace, and the rest of my lords the bishops, if desired so to do. I asked of him, whether I might acquaint your grace with what he promised? His answer was, I pray give my duty to his grace, and assure him, that I will faithfully serve him, as far as my skill in my profession will enable me.

I have sent your grace the papers that your grace was pleased to communicate unto me, which with my due thanks and humble duty tendered is all at present. From your grace's most obliged servant, to command,

WILLIAM NORWICH.

Letter to the Archbishop from the Bishop of London [COMPTON.]

My Lord;

Friday.

I was yesterday in town, but had not time to wait upon you. I thought it therefore my duty to give you the best intelligence I could meet with, which was this; they were resolved before the time of your appearing to make all the clerks of the council justices of the peace. He that discovered this seemed likewise to hint, that it was done to capacitate them to

take your several recognizances. What use this may be to you, I know not; but I thought it my duty to impart so much from, my lord, your grace's most faithful servant,

H. LONDON.

Letter to the Archbishop from the Bishop of Ely: with two Papers.

Ely House, Friday Morn.

May it please your Grace;

We spent much time yesternight with our ablest and kindest advisers, who are unanimous in this opinion, that we should by no means answer particular questions, but keep to the general; what are the matters of misdemeanor against us; and desire a copy of our charge. Two of our number had a long discourse (even till past eleven at night) with sir R. Sawyer, from whom we received more instruction than from all the rest. That conference is summed up in the inclosed half sheet of paper [N^o I.] and our measures of answering are set down to us. The other paper (the sheet) [N^o II.] are the minutes out of the counsel book on my lord Lovelace's case. All our wise friends are of the mind that we should give no recognizances. We shall attend your grace between two and three (cum Deo) Your grace's most obedient servant,

FRA. ELY.

N^o I.

Our appearance before the Council.

Q. Whether the privy council, being no court of record, can require us to enter into recognizances for appearance in any case, where they are not particularly authorised so to do by act of parliament?—A. Never done.

It does not appear that any of the House of Lords ever gave recognizances for misdemeanor.

The privy council have not committed for misdemeanor.

If no recognizances be given, their proceedings with us must be by subpoena out of the King's Bench; and then we may imparle till the term after.

Q. My lords, do you own this petition to be yours? And are these your subscriptions?

A. The petition was delivered to the king personally: his majesty knows what we delivered. Therefore before we make answer to this question, which may accuse ourselves, we humbly desire to know, whether the king requires it of us?

[The following paragraph in the archbishop's hand:]

We are not bound to accuse ourselves. Notwithstanding, if the king requires it, we will declare the true matter of fact; trusting in his majesty's justice and generosity, that it shall not be turned to our prejudice.*

* Tindal, in a Note to his translation of Rapin, says,

"It seems as the bishops were going to the

May it please your Majesty;

We are summoned here to answer to matters of misdemeanor which shall be objected against us; which objections we are ready to receive; and when we have received them we shall humbly beg, that we may be allowed some convenient time to advise what answer to make.

We are here, in obedience to his majesty's commands, to receive our charge, if there be any against us: but we humbly desire, that we may be excused from answering questions from whence occasion may be taken against us.

Whatever we did, we did it not out of any factious or seditious design, but out of a sense of our duty, both as prelates of the church and peers of the realm, to lay before your majesty the obligation that lies upon us to preserve the laws of the land, and our religion according to the reformation. And we should not have interposed herein, had not your majesty's order for publishing the declaration in our churches made it necessary for us to apply to your majesty.

N^o II.

The lord Lovelace gave no positive answers to the affidavits of words spoken by him;

But desired copies of them, that he might advise with counsel, and have time to give his answer: which copies were not granted.

It was told him it was matter of fact.

His answer was, He had not skill in the laws, but perhaps matter of law might arise upon perusal of those affidavits.

And his lordship asked, What reparation he was to expect, in case those who had sworn to the affidavits should be proved perjured?

The attorney was ordered to bring an information against his lordship, in the King's Bench, the next term.

But there was not any recognizance tendered to his lordship for his appearing.

Nor can it be remembered, that any such

council, they were advised to remember, that no man was obliged by the law to accuse himself. Accordingly when the king in council, holding the petition in his hand, asked them whether they had signed that paper? They made a low bow and said nothing. What! says the king. Do you deny your own hands? Upon which they silently bowed again. Then the king told them, If they would own it to be their hands, upon his royal word not a hair of their head should be touched: whereupon the archbishop says, Relying on your majesty's word, I confess it to be my hand. And so said all the rest. Then being ordered to withdraw, when they were called in again, they found the king vanished, and Jefferies in the chair, who using them very roughly, sent them to the Tower. The translator had these particulars from the late bishop of Durham's own mouth." Rapin's History of England, vol. 2, p. 763, Note, 3rd edition.

recognizance hath been tendered to any peer of the realm for the like appearance.

The Bishops appear again.

On Friday, June 8th, at five in the afternoon, his majesty came into the privy council. About half an hour after, the archbishop and six bishops, who were attending in the next room, were called into the council chamber, and graciously received by his majesty.

The lord chancellor took a paper then lying on the table, and shewing it to the archbishop, asked him in words to this effect—

Is this the Petition, that was written and signed by your grace, and which these bishops presented to his majesty?

The archbishop received the paper from the lord chancellor, and addressing himself to his majesty, said to this purpose—

Sir, I am called hither as a criminal; which I never was before in my life, and little thought I ever should be, especially before your majesty: but, since it is my unhappiness to be so at this time, I hope your majesty will not be offended, that I am cautious of answering questions. No man is obliged to answer questions, that may tend to the accusing of himself.

His majesty called this chicanery, and hoped he would not deny his hand.

The archbishop still insisted upon it, that there could be no other end of this question, but to draw such an answer from him, as might afford ground for an accusation; and therefore desired, there might be no answer required of him. St. A—— said, all divines of all Christian churches agree in this, that no man in our circumstances is obliged to answer any such question. The king still pressing for an answer with some seeming impatience, the archbishop said, Sir, though we are not obliged to give any answer to this question, yet, if your majesty lays your commands upon us, we shall answer it, in trust upon your majesty's justice and generosity, that we shall not suffer for our obedience, as we must, if our answer should be brought in evidence against us. His majesty said, no; I will not command you: if you will deny your own hands, I know not what to say to you, &c. The lord chancellor said, withdraw. After about half a quarter of an hour they were called in again: then the lord chancellor said, his majesty has commanded me to require you to answer this question—Whether these be your hands that are set to this Petition? His majesty himself also said, I command you to answer this question. Then the archbishop took the Petition, and having read it over, said, I own, that I writ this petition, and that this is my hand. Then the lord chancellor asked each of the bishops; and they all acknowledged their hands, and that they delivered this Petition. Then they were commanded to withdraw. After a while they were called in a third time. Then the lord chancellor told them, it is his majesty's pleasure to have you

proceeded against for this Petition; but it shall be with all fairness in Westminster-hall: there will be an information against you, which you are to answer; and in order to that you are to enter into a recognizance. The archbishop said, that without a recognizance they should be ready to appear and to answer, whensoever they were called. One of the bishops said, the lord Lovelace had been called before the council to answer to a complaint that was brought in against him, and that he was allowed to answer it in Westminster-hall without entering into any recognizance; and that they hoped, they might be allowed to answer in like nature. The lord chancellor said, the lord Lovelace had affronted his majesty, and had behaved himself very rudely before them; and therefore his majesty would have him proceeded against the common way; but, for the bishops there present, his majesty was pleased to treat them with all favour in respect of their character; and therefore he would have them enter into recognizance. His majesty was pleased to say, I offer you this as a favour, and I would not have you refuse it. St. A—— said, whatsoever favour your majesty vouchsafes to offer to any person, you are pleased to leave it to him whether he will accept it, or no; and you do not expect he should accept it to his own prejudice. We conceive, that this entering into recognizance may be prejudicial to us; and therefore we hope your majesty will not be offended at our declining it. Then the lord chancellor said, there are but three ways to proceed in matters of this kind; it must be either by commitment, or by recognizance, or by subpoena out of the King's-Bench. His majesty was not willing to take the common way in proceeding against you, but he would give you leave to enter into recognizance; and his lordship again advised them to accept it. Some of the bishops said, they were informed, that no man was obliged to enter into recognizance, unless there were special matter against him, and that there was oath of it made against that person: this they said not considering, that now the Petition was made special matter, and that their confessing it was as good as an oath. But at last they insisted on this, that there was no precedent for it, that any member of the House of Peers should be bound in recognizance for misdemeanor. The lord chancellor said there were precedents for it; but, being desired to name one, he named none. The bishops desired to be proceeded against the common way; but that was not allowed, and they were a third time commanded to withdraw.

Awhile after they were called in a fourth time, and asked, whether they had considered of it better? and, whether they would accept his majesty's favour? The archbishop said, he had the advice of the best counsel in town; and they had warned him of this, assuring him, it would be to his prejudice; and therefore he desired, that it might not be required, offering his promise again to appear and to answer,

whensoever he should be called. But his majesty seemed to be displeased, and said, you will believe others before you will believe me: so they were the fourth time commanded to withdraw.

A good while after this the earl of Berkeley came forth to the bishops, and endeavoured first to persuade the archbishop to enter into recognizance, which he thought had been agreed between them over night; for on Thursday night, almost at bed time, his lordship came to the archbishop at Lambeth, and after half an hour's discourse at last came to speak of his appearing at council the next day, and then advised his grace to offer a recognizance: his grace said, I am advised to that way: his lordship said, that is well, and soon after took his leave. Now he seemed to look upon it as something strange, that his grace should refuse to enter into recognizance: but, finding him fixed, he endeavoured to persuade the other bishops. He told them, he would do it, if he were in their case; but, finding them all of a mind, he went outward from the council, but soon after returned that way into the council chamber again: from whence about half an hour after came forth Mr. Riley, a serjeant at arms, with the warrant, signed with fourteen hands, to carry the seven bishops to the Tower; and another warrant, with nineteen hands and seals, for the lieutenant of the Tower to keep them in safe custody.

Dialogue between the King and Bishops after the third or fourth coming in.

A. Sir, we appear before you this day by virtue of your summons as criminals; the first time that ever I stood as a criminal before any man, and I am sorry that it happens to be before my sovereign lord. We are advised, Sir, that they, who are in this condition of criminals, are not obliged to answer to questions, which may be to their prejudice: notwithstanding, if your majesty requires it of us, we will tell you the true matter of fact, trusting in your majesty's justice and generosity, that no advantage shall be taken against us from our confession.

Q. Is this your petition?

R. Pray, Sir, give us leave to see it; and, if upon perusal it appears to be the same——yes, Sir; this is our petition, and these are our subscriptions.

Q. Who were present at the forming of it?

R. All we, who have subscribed it.

Q. Were no other persons present?

R. 'Tis our great infelicity, that we are here as criminals; and your majesty is so just and generous, that you will not require us to accuse either ourselves or others.

Q. Upon what occasion came you to London?

R. I received an intimation from the archbishop, that my advice and assistance was required in the affairs of the church.

Q. What were the affairs which you consulted of?—R. The matter of the Petition.

Q. What is the temper you are ready to come to with the dissenters?

R. We refer ourselves to the Petition.

Q. What mean you by the dispensing power being declared illegal in parliament?

R. The words are so plain, that we cannot use any plainer.

Q. What want of prudence or honour is there in obeying the king?

R. What is against conscience is against prudence, and honour too; especially in persons of our character.

Q. Why is it against your conscience?

R. Because our consciences oblige us (as far as we are able) to preserve our laws and religion according to the reformation.

Q. Is the dispensing power then against law?—R. We refer ourselves to the Petition.

Q. How could the distributing and reading the declaration make you parties to it?

R. We refer ourselves to our Petition, whether the common and reasonable construction of mankind would not make it so.

Q. Did you disperse a printed letter in the country, or otherwise dissuade any of the clergy from reading it?

R. If this be one of the articles of misdemeanor against us, we desire to answer it with the rest.

General. We acknowledge the Petition: we are summoned to appear here to answer such matters of misdemeanor, as should be objected; we therefore humbly desire a copy of our charge, and that time convenient may be allowed us to advise about it, and answer it. We are here in obedience to his majesty's command to receive our charge, but humbly desire, we may be excused from answering questions, from whence occasion may be taken against us.

Warrant of Commitment of the Bishops to the Tower.

These are in his majesty's name and by his command to require you to take into your custody the persons of William lord archbishop of Canterbury, William lord bishop of St. Asaph, Francis lord bishop of Ely, John lord bishop of Chichester, Thomas lord bishop of Bath and Wells, Thomas lord bishop of Peterborough and Jonathan bishop of Bristol, for contriving, making and publishing a seditious libel in writing against his majesty, and his government, and them safely to keep in your custody, until they shall be delivered by due course of law: for which this shall be your sufficient warrant. At the council chamber in Whitehall this 8th day of June 1688.

To the Lieutenant of the Tower of London.

Jefferys, C. Sunderland, P. Arundel, C. P. S. Powis, Mulgrave, Morray, Middleton, Edw. Herbert, Melfort, Dover, Huntington, J. Erule, Castlemain, Peterb, N. Butler, Preston, Godolphin, Craven, Dartmoth.

June 12, 1688. This is a true copy of the original compared by us.

N. Powel, Not. P. T. Newcome, F. Nichols.

Order of Council for prosecuting the Bishops.

At the Court at Whitehall, June 8th, 1688,

Present,

The King's most excellent Majesty,
 Ld. Chancellor, E. of Middleton,
 Ld. President, E. of Melfort,
 Ld. Privy Seal, E. of Castlemain,
 Marq. of Powis, Viscount Preston,
 Ld. Chamberlain, Ld. Dartmouth,
 E. of Huntingdon, Ld. Godolphin,
 E. of Peterborow, Ld. Dover,
 E. of Craven, Mr. Ch. of the Exch.
 E. of Berkeley, Ld. Ch. Just. Herbert,
 E. of Moray, Sir Nicholas Butler,

Mr. Petre.

There being this day issued a warrant by his majesty's special command in council, under the hands and seals of the lords of his majesty's most honourable privy council, for committing to the Tower of London, his grace William lord archbishop of Canterbury, William lord bishop of St. Asaph, Francis lord bishop of Ely, John lord bishop of Chichester, Thomas lord bishop of Bath and Wells, Thomas lord bishop of Peterborough, and Jonathan lord bishop of Bristol, for contriving, making and publishing a seditious libel against his majesty, and his government (a copie whereof is hereunto annexed) there to be safely kept, until they shall be delivered by due course of law: It is this day further ordered by his majesty in council, that sir Thomas Powis, knight, his majesty's attorney general, and sir William Williams, knight, his majesty's solicitor general, do forthwith prepare an information against the said archbishop, and the several other bishops above named, for the offence aforesaid, and prosecute the same according to law, in his majesty's court of the King's-Bench the next term.

Ex. Orig.

Letter to the Archbishop from the Bishop of London.

My Lord;

Saturday.

This comes to bring that service to you, which by the help of God shall be never wanting. I am sorry with all my heart, that his majesty has no more confidence in his best friends. I pray God give you your health during your continuance in this place, which will, I hope, be but a very short time. How long I shall be from you I cannot tell: but you may be assured my heart shall be ever with you. And whilst I am at liberty, I beseech you not to spare me in any thing I am able to perform. It is not now a time of ceremony; and therefore I should hate myself, if I had the least regret in undergoing any duty, whereby I might most express myself, my lord, your grace's, &c.

H. LONDON.

Another to the same from the same: With a list of Bail.

My Lord;

Tuesday.

The inclosed is a list of such lords, as your respective lordships are advised to write to,

8

that they would be your bail at Westminster hall, when the time shall come. You may be assured the advice comes from your best friends. I forgot when I waited upon you yesterday to mention sir John Holt of Grayes Inne. Indeed you ought to take him in for many reasons: and I know he has a hearty desire, as well as skill, to serve you. If you have any commands for me, I beseech you send them by the bearer to, My lord, your grace's, &c.

H. LONDON.

List of Bail for the Bishops.

Archbp. of Cant.	{ E. of Bedford. E. of Danby. Ld. V. Fauconberge. Ld. M. Halifax.
Bp. of St. Asaph.	{ †E. of Ossory. E. of Clarendon.* E. of Carbery, † als. Ld. Bul- lingbrook.
Bp. of Ely.	{ E. of Burlington. E. of Manchester. Ld. Grey.
Bp. of Chichester.	{ E. of Caerlisle. Ld. V. Newport. Ld. Paget, † als. Ld. North.
Bp. of Bath and Wells.	{ E. of Clare. E. of Shrewsbury. E. of Dorset, † als. Ld. Crew.
Bp. of Peterburg.	{ E. of Kent. E. of Nottingham. E. of Radnor.
Bp. of Bristol.	{ †E. of Worcester. E. of Devonshire. E. of Scarsdale, † als. Ld. Chandois. Ld. Lumley.

Letter to the Archbishop from the Bishop of Norwich: with one enclosed from Sir Thomas Clarges.

May it please your Grace; 8 o'clock.

When I returned from your grace I found the enclosed left at my lodgings by sir Thomas Clarges. I would not have troubled your grace with it but for the last line of it.

I do believe your grace nor my lords will be sent for to Westminster to-morrow: not only upon the authority of the enclosed, but from other hands, I find, that its not thought fit to bring you to Westminster to-morrow: the reasons I shall respite till to-morrow betimes in the morning: in the mean time I heartily pray for your grace his happiness and the rest of my lords at the Tower, and am Your grace's most obliged servant, to command,

WILLIAM NORWICH.

My Lord;

At Mr. Finch his chamber I met my lord of Nottingham, whose opinion was, That it is best for the lords to plead the generall issue: because upon a tryall they could say more, and give more in evidence, than could be expressed

* The words in *italic* are erased in the original.

† In the archbishop's hand: the rest in the bishop of London's.]

in a plea. Mr. Finch was not thoroughly convinced, but said, if the information were so penn'd that the petition would be at large included in it, he should think it might be best to plead the general issue, yet he would conclude nothing thereof, till he should advize with the rest of their lordships' counsel. I went from him to Mr. Grang the attorney, and he agreed, That if the matter was fully mentioned in the information he believed the counsel must advize to plead the general issue. It is said the master of the office will stick the jury, and will name eight and forty, whereof the attorney for the king would put out 12, and the attorney for the lords as many: and it may be hoped, in so many, there may be a competent number of good men. My lord of Nottingham is gone to the Tower. There will be about twenty peers at Westminster to-morrow to serve the lords, if need be: but I am told by a friend, the king's attorney will not be ready till Saturday or Monday. I am your lordship's, &c.

June the 14th, 1688.

THO. CLARGES.

Letter to Mrs. Nalson from Dr. Nalson.

I might tell you, to excuse my silence, that I have been ill, but all privet concern and thought of ceremony must give place to that extreme trouble we must needs all of us be in whilst our spirituall fathers are under confinement; a triall of patience so great that it were cruelty to expect we should not bemoan ourselves; but if it be a crime to lament (what the higher powers here below command so severely) innumerable are the transgressors; for ever since the black Friday sentence the nobles of both sexes keep their constant court at the Tower, where every day vast multitudes of all conditions run perpetually, all in tears, to beg the holy men's blessings: the soldiers wait as mourners, and become so devout, that though the scene be truly sad, the end I hope will be the saving of many, and a most glorious confirmation of the truth, and the sacredness of our religion, which seems to be now brought on a public stage, that all the world may see more clearly her conformity to what the first confessors embraced and recommended so very tenderly to mankind's care and affection. Thanks be to God, who gives us pastors that will not (nor, by a criminall silence, give others encouragement to) lead us astray. I need not tell you how much this integrity of the bishops has served to convince their censurers of rash and uncharitable conceits, nor how sensible people grow of the fatal consequences of weakening the established church by a humoursome dread of her severity. I am willing to hope that the storm that's grown so loud, and seems still to denounce terrible things, will end in a glorious calm: it will do so to all that are wise and true of heart. Let's, dear friend, pray and endeavour to love God more, and with sincere humility set ourselves to the practice of all Christian virtues.

To-morrow its thought our illustrious con-

VOL. XII.

fessors will be sent for to Westminster; they will not be solitaires there. God Almighty overrule the hearts of the children of men, and, if it be his blessed will, deliver our saints from all that wish them evil.

June the 14th, 1688.

My service to your good neighbours, who I dare say pray for us.

Some heads to discourse on and consider.

1. Each counsel to have ten guineas sent them to-day.
2. Some one hand ought to give all fees: because when two pay it breeds confusion, and may cause both to pay for the same thing.
3. Those who are to act as attornies must unite in temper and affection, and go to counsel together, not apart, that both equally knowing the result of advices may follow them accordingly.
4. That three of the lords may act and direct for all the rest.
5. That the officers of the Tower be considered as shall be thought fit.
6. And the warders who come up to attend your lordships gratified in like manner.

[The following in the archbishop's hand.]

7. To correct and supply the narrative of what past between the king and the bishops at the delivery of the petition.
8. To set down an exact narrative of what past in the council-chamber, June 8th, between the king, the lord chancellor, and the bishops.

Letter to the Archbishop from the Bishop of Winchester.

May it please your Grace;

This waits upon you with a tender of my most humble duty; and though I cannot by this way express the deep sense I have of your grace's and my brethren's sufferings, yet I beseech you be assured, that as I am not wanting in my prayers for you and them, so I shall never sacrifice the honour of our zealously loyal mother the church to any interest whatsoever. I am your grace's, &c.

P. WINCHESTER.

Farnham Castle, June 24, 1688.

Minutes for his Grace of Canterbury: Prepared by Mr. Hanses, to have been spoken at the Trial.

That it is a very sensible affliction, both with respect to the church of England and to himself, to appear in a court of justice as a criminal; but as the loyalty of the church, as well in her principles as constant practices, have been so conspicuous; and his grace having in the whole course of his life approved himself a true son of that church, in the point of duty and obedience as in all other particulars, so he doth not doubt so to make his innocence and integrity appear on this occasion, as not only

to acquit himself to the court and to the world from all sedition, malice, faction and libelling, great crimes in themselves, and which he has in the utmost detestation, but effectually to prevent any imputation to the church of England on this occasion.

That it has pleased God to call him to the great dignity, office and authority, of an archbishop in this church; whereby he has the honour to be *primus par Angliæ*; and as the charge committed to him is greater, so he thought it more incumbent upon him to take an exact care, to discharge a good conscience in the exercise of that great dignity, and the more carefully to watch over that flock God had committed to him: and this God, this nation, and the world required of him.

That he always esteemed it his duty, as a prelate, not only to do his utmost endeavour to conserve the profession of the reformed religion amongst us, but to promote the honour and interest of the church, and to oppose, as far as lawfully he could, all that tended to her ruin, and struck at her safety (for which glorious ends he was always ready even to lay down his life, if ever it should please God to call him to it.) And as a peer of the realm he thought himself likewise under very great obligations, not only not to betray the laws himself, but also to endeavour to transmit them to posterity, that the ages to come might have no reason to curse his memory.

That as all his brethren, the bishops of this church, so he more eminently, were counsellors to the king by their office, in matters ecclesiastical, as the temporal peers were of his counsel in lay matters, and his judges in matters of law: that the reformed bishops had always shewed themselves honest counsellors, and faithful servants to the crown.

That his majesty having thought fit to publish his Declaration for liberty of conscience, where at once he had suspended all ecclesiastical laws whatsoever, it was obvious to observe, how fatal this must needs prove both to the church and religion established, and the laws of the land.

But being unwilling to intermeddle, till there was absolute necessity for it, in a matter that might possibly give offence to the king, whose good opinion and favour we are ambitious to preserve, so far as it can be done without a violation of our consciences, or betraying the trust by God and the laws reposed in us: till the matter was brought home to our own doors, by an order published in the Gazette for the reading of the last Declaration, &c. he was loath to reflect so much upon it, as he has found himself obliged to do since.

Then he apprehended it was high time to consider what would become him to do with regard to God, the king, and his own conscience; and therefore seriously considering the said Declaration, and how far he could comply with the king's command for the reading of it, if it should be legally sent to him, which he apprehends it has not yet been, a

publication in a Gazette not being such a due notice as he was obliged to have any regard to: however, having attentively considered it, he soon found how it shook the force of all our laws, and the very foundation of the reformed church of England, and in that the whole Protestant religion; that it seemed to alter the whole frame of the government, and introduce a new constitution; and with respect to ecclesiastical affairs, which was more his concern, he found all the statutes of provisors, for maintaining of which our Popish ancestors in all ages had so zealously contended, set aside; all the laws for asserting the rights and liberties of this church, and all that supremacy and superiority in matters, and over persons ecclesiastical, which our church justly attributes to the king, and which all good Christian kings have ever exercised, &c. in opposition to the groundless and unjust usurpations of the pope and church of Rome, suspended, and in effect abolished. That it was apparent, that if the king had that power, which in those declarations he had exercised, the reformation itself was become arbitrary, and that the church of England, as it was the religion of the state, had no other subsistence, but by the king's mere favour. Whereas he did humbly hope he might say, it was founded upon a much firmer basis, if all the laws made against Popery, and for the establishment and security of the Protestant religion, were in being and full force; all which, by virtue of this supposed power of the king, were laid asleep and set aside. That for such laws as punished men for the exercise of their religion, or their dissent from the church, he was no otherwise concerned, than as they were laws of the land; and as such, he humbly conceives, cannot be suspended by a less authority than that which first made them, they being only laws of state, and always so considered by him and the church. [And here may be said what shall be judged convenient about taking off penal laws against Dissenters.]

But that which more nearly touched him, was, that thereby all those laws, by which the church has its legal establishment, and by which she is fenced and guarded against the sworn enemies of her peace, are vacated and made useless; that all the acts of uniformity, and all the acts for taking the oaths of allegiance and supremacy, and the tests, are suspended and dispensed with; all which laws are so much the fences, the mounds and the bulwarks of the Protestant religion and the church of England, that no man can concur to the weakening or destroying of them, without betraying at once his religion and the laws of the land.

These were the consequences and effects of that power, and these we were commanded to make ourselves parties to in publishing and teaching them to our people.

That seemed apparently to tend to the introducing of Popery again, and the destruction of the church of England and the Protestant reli-

gion amongst us, which so many of our predecessors had sealed with their blood.

That he could not but think himself under the highest obligations to lay these things to heart, and to bethink himself, how to do his duty on this great occasion; that he might neither lie under the imputation of want of zeal for his religion, or be thought wilfully disobedient to the king; for he clearly saw he could not in prudence, honour, or conscience, obey him.

He called to mind what his predecessors had done on the like occasions. He remembered that archbishop Abbot wrote a very bold and a very honest letter to king James 1, in the 21st year of his reign, on this very subject of dispensing with the laws in matters of religion; at which that king took no offence: wherein he told him, that he thought it the duty of his place, to let him know, that the "toleration he [endeavoured] to set up by proclamation could not be done without a parliament, unless his majesty would let his subjects see, that he would take unto himself ability to throw down the laws of the land at his pleasure." Rushworth, vol. 1, p. 85.

He remembered what king James 1. himself, during the treaty of the Spanish match, had replied to a demand of the king of Spain about a general toleration; "that he, of his own authority, could not grant a general liberty of exercising the Roman religion." Rushworth, vol. 1, p. 67.

That, in the same king's time, a prohibition to the judges and bishops to execute the laws against Papists was laid aside, and this reason given for it by the lord keeper Williams: "Because to forbid the judges and justices of a peace against their oaths was a thing unprecedented in this kingdom." Rushworth, vol. 1, fol. 101.

And that, 2 Charles 1, by the king's command the earl of Bristol was impeached in the Lords House for having but presumed to counsel the king against law, "to grant a free toleration and silencing of all the laws made and standing in force against the Papists." Rushworth, p. 251.

And that in parliament in 1662 and 1672, and the last parliament, this power had been questioned and declared illegal, &c.

That thereupon he thought it his duty to attend his majesty, in hopes, if not to move his majesty from the main point, yet humbly to lay his reasons before him, why he could not comply with his majesty, and prevail of him to revoke his command as to the reading of it, &c.

And this being a thing of the greatest importance, he was unwilling to be alone in it; especially considering that it was the common cause of the whole church, he was willing to have the advice and assistance of all his brethren that were in and near the town.

That being met, and the whole matter laid before them, and all having an equal zeal for the Protestant religion, and concern for the

laws of the land, and clearly seeing he had not made a false judgment of this matter, and concurring in opinion with him, they all concluded to make an humble address to the king; and having conceived it in the most soft and modest terms that could be, without affixing any thing directly in derogation of the king's power, but laying only before him what had been done and declared before that time, and letting him know with the greatest decency, that in conscience they could not comply with his commands, and humbly begging him to be so gracious, as not to insist upon his command, and hoping that when all his majesty's subjects had liberty of conscience, those who had most pretence to it should not be the only persons to whom it is denied: and therefore presumed with greater confidence to wait on the king, which yet they did not do, till leave had been obtained from the king, and that they were introduced into the king's closet, where they privately and humbly laid themselves and their address at his feet.

That this being the fact, and these the inducements; that in all this they having done nothing but what became them both as prelates and peers in the discharge of their duties, and that in the most humble and secret way that could be; that it being the right of every subject in England to petition, and their petition being delivered with the king's leave, and the matter of it so modest and inoffensive, and the terms so dutiful and respectful; he cannot believe he need use many words to persuade men of conscience, integrity, and understanding, how strange a thing it would be to turn such a petition into a libel, and the honest discharge of their conscience and duty into an offence.

*A Speech prepared by the Bishop of St. Asaph, to have been spoken at * our Trial.*

My Lords, and you Gentlemen of the Jury; We are here before you under a load of accusation, such as was never laid before upon so many of our order (I think) in this, or any other kingdom. It is a load, that we should sink under, considering from whence it cometh, if we were not supported with (give me leave to say) a good conscience, and testimony of Him that is greater than our conscience, and knoweth all things. Without this it would overwhelm us to think, that our gracious prince, of whose favour and bounty we have had so much and so long experience; that he should at last look upon us, as so undutiful, so ungrateful, as we are set forth in this information; nay, as we must acknowledge ourselves to be, if we had given any colour to this information: we had been monsters indeed, if we had given any just grounds for it. We to conspire against the king!—to undermine his government by making and publishing seditious libels! What strange kind of men would they make of us! We, that not only by past obli-

* The whole in archbishop Sancroft's hand.

gations, but by our present interests, and all our hopes of this life and the future, have not only the strongest, but all possible motives to hold us to obedience and loyalty! In a word, we, whose holy religion teaches us, under pain of damnation, not to rebel against our king, though he be of another religion; nay, though he should be an enemy to our religion! This is the Christian doctrine, which we profess, and which we constantly teach; in which we have always lived, and by the grace of God we will die. Let them say so, if they can, who put you and us to all this trouble, by persuading his majesty otherwise of us.

God be thanked, we have so behaved ourselves not only in former reigns, but even in the reign of his present majesty (whom God long preserve), that they cannot charge us justly with any thing; and least of all with this crime of sedition. They can pretend no other colour for this charge, but what they draw out of a petition, that we lately presented to his majesty. But what is there so criminal in this? For our parts we do not see it: we do not see, that we have transgressed the bounds of our duty. They cannot say we did so much as petition, till we were forced to it. We knew of his majesty's declaration a twelve-month before. We saw, it assumed such a power as we did not understand. We saw, it contained a toleration that we could not approve; that actually took away all the legal establishment of our church, and tended, as far as we could judge, to the bringing in of popery. This we saw with sad hearts: yet all that twelve-month we were silent; we laid our hands on our mouths, which perhaps was a fault in us, but surely deserved another name than sedition. But at last, after a full twelve-month, when this declaration came forth with an order annexed, that we must be parties to it, we were at least to be the instruments for the publishing of it; nay, we must bring in this, as a parenthesis, into the worship of God: this was enough to make the dumb to speak: they would have spoke, they would have roared at it in any church of the Roman communion: they may excuse us, if we could hold silence no longer.

But yet we did not break it neither seditiously; but on the contrary with all the duty in the world. The archbishop of Canterbury, who by his place is counsellor to his majesty, and who ought to be advised with in all things belonging to the church, was so far from being advised with in this, that he knew nothing of it, till he saw it in the Gazette. When he saw this strange thing there, he was at the present surprised with it; he saw what the consequence of it would be; he saw, he must do something to prevent such things as have since happened, or worse: but yet he would do nothing without the advice of his suffragans. He therefore sent for as many as were within call; and with their advice, he resolved to petition his majesty.

The effect of our petition was, as you have

heard, to beseech his majesty, that he would not impose this hardship upon us; that he would not lay this burthen on our consciences; that he would give us leave to worship God in quiet, and to enjoy that liberty which the law had given us, and which he was giving to the rest of his people. We do not see that the matter of our petition was seditious. But for that it hath been sufficiently cleared by our counsel.

And for the manner of presenting our petition; this was surely so far from being seditious, that it was with the greatest humility and submission in the world. Before we came to his majesty, we acquainted his principal secretary of state, the lord president of the council; who, if he were present, we presume, would witness for us, that we did what we thought would have secured us from ever having this charge brought in against us. We offered, and desired, that he himself would receive our petition, and shew it his majesty, before we appeared to deliver it; or at least, that he would be informed of the contents, to the end that it might be no surprise to his majesty. I spoke these words, as the bishop of Chichester knows; for he was present there with me. This, we thought, was the dutifullest way we could take to present our petition. If we had known any way more dutiful, we would have taken that; but we knew of no better. And when this was refused by his majesty's secretary, what could we do more? We must follow him, the way he would go. He went and acquainted his majesty; he brought us word, that we had leave to present our petition. We did present it to his majesty alone in his closet. If there was any fault in our petition, his majesty might have covered it; he might have suppress our petition: and if it had pleased his majesty to have done so; if he had but declared that such was his pleasure, there had been no copy of it now remaining in the world.

This is a short account of that seditious libel, as they call it, and of our seditious publishing of it in the presence of his majesty. We know his majesty can do no wrong, but they may that act for him; and do it, in thus charging us and our petition. It is easy to give evil words and hard names to the most innocent persons, and to the best things in the world; but we trust you have the prudence to distinguish, and in that trust we leave our cause in your hands.

Only this we have to say farther; and we have heard our counsel say it, who are better able to judge: they say, this is the greatest cause that ever came to this bar. It is not the proper concern of six or seven bishops: what are they to the great consequence of this cause? The consequence of it extends to the whole church and kingdom; it extends to the Protestant religion, and all the laws of England: the happiness of this and future ages depends upon it. Surely, if ever there was any cause that required mature deliberation, there ought to be the greatest deliberation in the

judging of this. We beseech you therefore not to look at all upon us, but upon our cause. And we beseech God to bless his sacred majesty, and to incline his royal heart towards us. We beseech God to forgive them, that have set him against us. We beseech God to direct and govern your councils; that whatsoever becomes of us, the glory of God may be promoted, and that you yourselves may rejoice, and the whole nation may bless God with you, for your wise and righteous verdict.

Letter to the Archbishop from Mr. Ince.

May it please your Grace;

We have watched the jury all night carefully, attending without the door on the stair-head.

They have by order been kept all night without fire or candle, bread, drink, tobacco, or any other refreshment whatever, save only some basons of water and towels this morning about four.

The officers, and our own servants, and others hired by us to watch the officers, have and shall constantly attend, but must be supplied with fresh men to relieve our guards, if need be.

I am informed by my servant and Mr. Grange's, that about midnight they were very loud one among another; and the like happened about three this morning; which makes me collect they are not yet agreed: they beg for a candle to light their pipes, but are denied.

In case a verdict pass for us (which God grant in his own best time) the present consideration will be how the jury shall be treated.*

* Mr. Barrington (Observations on 34 and 35 H. 8), notices that "the 26 H. 8, c. 4, (of which he speaks as introductory of a thorough union of laws between England and Wales) enjoins, that jurors in Wales should not, without leave of the court, be permitted to have either meat or drink." To which he adds, by way of Note, "The ill effects of a bribe to a jury, by their being better feasted perhaps by the plaintiff than the defendant, are not now apprehended, though I am persuaded this was the cause of this injunction; as sir Thomas Smith mentions, that in his time it was usual for the party, who obtained the verdict, to give the jury a dinner. (Commonwealth, p. 74.) I must admit, however, that sir Henry Spelman derives this restraint from an ancient canon, 'quod de nocte non est honestum iudicium exercere.' Rel. Spelm. p. 89, which at the same time accounts for the jury being denied candles, if the leave of the court is not obtained. We now think the regulation a wise one, and adhered to it, because it contributes to the greater dispatch of business; causes at this time, however, did not 'hang' as they do at present: one reason for which (amongst many others) arose from all witnesses in civil causes being examined by the judge, as is still the practice at the crown bar. This informa-

The course is usually each man so many guineas, and a common dinner for them all.

The quantum is at your grace's and my lords' direction.

But it seems to my poor understanding, that the dinner might be spared, least our watchful enemies interpret our entertainment of the jury for a public exultation and a seditious meeting: and so it may be ordered thus:

Each man guineas for his trouble.

And each man a guinea over for his own desire: with my lords order, that I or some other

tion with regard to the ancient practice, I remember to have heard from an aged and eminent serjeant, who likewise believed the first precedent for an adjournment to have been within these forty years. Adjournments are, by the great diligence and spirit of the present bench, avoided as much as possible: if a cause, however, lasts more than sixteen hours, it is ridiculous to call it a decision, as attention to the evidence cannot be longer expected.

"Stiernhook expresses himself in the following manner, with regard to the confinement of an English jury: 'Ad absolvendum verò vel condemnandum, in Angliâ, necessitate compelluntur, atque eousque famelici et quasi captivi includuntur, nemine intromisso, donec absolverint seu condemnaverint.' De Jure Sueonum et Gothorum vetusto, Holmiæ, 1672, cap. iv. p. 59."

The passage to which I suppose Mr. Barrington to refer, I find in Smith's Commonwealth, book 2, chap. 18, as follows:

"Then there is a bailiff charged with them to keep them in a chamber not far off, without bread, drink, light, or fire, until they be agreed; that is, till they all agree upon one verdict concerning the same issue, and upon one among them who shall speak for them all when they be agreed: for it goeth not by the most part, but each man must agree. They return, and in so few words as may be, they give their determination: few I call six, or seven, or eight words at the most (for commonly the issue is brought so narrow, that such number of words may be enough to affirm or to deny it), which done, they are dismissed to go whither they will. The party with whom they have given their sentence, giveth the inquest their dinner that day most commonly, and this is all they have for their labour, notwithstanding that they come, some twenty, some thirty, or forty miles or more, to the place where they gave their verdict, all the rest is of their own charge."

As to adjournment in criminal cases, see, moreover, the Trials for Treason in the year 1794; and Stone's Case, A. D. 1796. See, also, vol. 8, p. 730, difference of opinion in an Assize. See Bracton De Legibus et Consuetudinibus Angliæ, lib. 4, c. 19. De Assisa Novæ Disseisinæ. As to juries eating, see Rex v. Burdett, 12 Mod. 111, and the books there cited.

intreat them, in your names, not to dine together, for the reasons aforesaid.

I conceive my lords the bishops will resolve how to direct me in this point, before they come into court.

There were 22 of the jury appeared, and no more.

And they that did not serve will expect a reward as well as those who did.

I beg your grace's pardon for this trouble: 'tis only to enable my lords to consult what is fit to do decently on our part, and all is entirely submitted to your grace's and my lords judgment by, my lord, your grace's most humble servant,
JO. INCE.

Six o'clock in the morning, June 30, 1688,*
at the Bell Tavern, King-street.

Just now the officer brings me word they are all agreed, and are sending to my lord chief justice to know, where he pleases to take their verdict.

There must be 150 or 200 guineas provided.

An Account of the Proceedings at Westminster-hall on the 29th and 30th of June, 1688; relating to the Trial and Discharge of the Archbishop of CANTERBURY, the Bishop of ST. ASAPH, Bishop of CHICHESTER, Bishop of ELY, Bishop of BATH AND WELLS, Bishop of PETERBOROUGH, and the Bishop of BRISTOL.

The Indictment, when read, was very much excepted against, on the account of its form, in that it did not mention all the petition they were indicted for; there was not either the title of it expressing to whom it was directed (*viz.* "To the king's most excellent majesty," was omitted,) and the prayer afterwards ("We therefore pray," &c.) was not there; which, being closely pursued by the bishops counsel, seemed to invalidate the whole business. Then it was not and could not be proved by the king's counsel, that the bishops presented the petition to the king. They had in the court the original, and subpoena'd some of the archbishop's and bishops' chaplains, servants, and others, to prove their hands, which was not done very clearly upon most of them; all the proof the king's counsel had for the presenting the petition to his majesty, did not directly prove it upon them; the most it amounted to was, either that the king told them he had it from the bishops, or, that my lord chancellor did ask them if it were theirs (when they were summoned before the king and council), and that they then expressed an averseness to own

* A letter of this date from Ince to the archbishop, agreeing almost word for word, so far as it goes, with this, is given in Macpherson's Original Papers, vol. 1, p. 152, purporting to be extracted from Tanner's Collection, in the Bodleian; but several passages in the letter as here given are there omitted. As to Macpherson's authenticity, see before in this Collection, vol. 6.

it; saying before the king, that if his majesty did insist on it, and that it should not be improved to their disadvantage, or produced in evidence against them, that they would be plain, and leave it to his majesty. Upon this the bishops counsel had some reflections which my lord chief justice told them he must not hear. But this did not amount to a full proof of the point.

Then the bishops counsel did greatly insist upon the indictment being laid in a wrong county; for it was proved upon oath, that the archbishop was not out of his house for a very considerable time before he was summoned to the king in council. Now what was alleged against them was done at Lambeth, and therefore in Surrey the indictment ought to have been laid, which seemed much to affect them.

After this, the bishops' counsel objected against the term 'publishing;' whereas what was said to be done by them, was in the privatest way that could be, and given only to the king; which caused a long debate between both parties, of things requisite to denominate a 'publication.'

And here things were going to a conclusion, and the judge was entered upon summing up the evidence; but Mr. Finch (one of the bishops' counsel) interrupted my lord chief justice, saying, there was one material evidence remaining. Whereupon my lord desisted, though with some seeming dissatisfaction to the rest of the bishops' counsel: for the judge was going on very favourably for the bishops' cause: some of the bishops importuned my lord chief justice to proceed, but he would not: and so it brought on more discourse about the former subjects, and occasioned the sending for my lord president, who came into court after it had stayed an hour for him: the evidence, that he gave upon oath, could not fully prove the delivery of the petition to the king by the bishops. When before, for the proof of this the solicitor did very greatly importune some witness for the king, (that had upon oath delivered what they knew about this matter, which was as aforesaid) by putting to them very intricate questions; my lord chief justice reproved him, saying, it was not to be suffered; adding, that if he went on thus, he would let the bishops counsel loose on him.

After these things, my lord chief justice asked the bishops' counsel, what else they had to plead? whereupon they proceeded to that part of the indictment that called the bishops' petition 'a scandalous, seditious libel, &c.' which occasioned very great, solemn, and most pleasing debates: for, hereupon they entered into and discussed the lawfulness of the declaration and the dispensing power, which were harangued by every one of the bishops' counsel in most brisk, home and admirable speeches, for the space of three hours, shewing the declaration to be against and contrary to law, which no power could dispense with or abrogate, but that which made it, (*viz.* a parlia-

ment) and that the ecclesiastical laws had the same foundation as the civil, and could be therefore no more dispensed with. That the declaration did evacuate the laws for Sabbath-breaking, fornication, &c. and let loose the reins to the most extravagant sects and licentious practices; and that all laws might be dispensed with, as well as some: That the bishops were sworn to maintain the ecclesiastical laws; and in representing the case thus to his majesty, they had done as the law directed them, and according to prudence, honour, and conscience. There were hereupon publicly read several acts of parliament, records of the Tower, and parliament records; among which, one act of parliament was observable, that gave the king power to dispense with a law for a stated time: so that what dispensing power he ever had, was both given and bounded by parliament. From what they produced out of the parliament records and otherwise, they greatly confirmed what was said in the petition, of the dispensing power having been often declared illegal in parliament, and particularly in the years 62 and 72; and in the beginning of his majesty's reign, which was in 85, when the parliament declared the popish officers could not be dispensed with, but that it was contrary to law to do so, though they were willing by act of parliament to indemnify such as his majesty should nominate, &c. And they shewed how the like dispensing power upon the same occasion was accounted illegal in 62 and 72, both by parliament and the king himself, who suffered the seal to be tore off, and gave the testimony of his disowning such a dispensing power. To which the solicitor's chief answer was, that the king then lacked money, and that such acts as aforesaid (whatever they might say) did confirm, not give the king's dispensing power. In short, the bishop's counsel behaved themselves in this weighty matter with a great deal of gallantry and plainness, no wise inferior to most men's expectations and desires.

The chief of the managers for the king was the solicitor, William Williams, who, as was apprehended, did no great wonders for invalidating the foregoing arguments. He was very hot and earnest (if not passionate) in proving it a libel; saying, it would be so, though it were done by them to redress a certain grievance: whereupon, my lord chief justice, asking what course then they should take, or what they should do in such circumstances, he answered, acquiesce, (which occasioned a very great hiss over the court): He added farther, to prove it libellous, the insinuating expressions of gaining the populace, by saying, "It was not for want of due tenderness to dissenters, in relation to whom we are willing to come to such a temper as shall be thought fit, when that matter shall be considered and settled in parliament and convocation." In convocation, said he, what's the meaning of that? But here my lord chief justice gave him a check, and restrained what he seemed greatly disposed to vent against it. There was not very

much said by the rest of the king's counsel, at least nothing more considerable than his. The king's attorney general was pretty moderate.

Sir Bartholomew Shores spoke a little, but was presently silenced; (in the vacancy of stay for my lord president, my lord chief justice said to sir Barth. Shores, now sir Bartholomew, we have time to hear your speeches.)

Serjeant Baldock's argument against the bishops was chiefly upon their refusing, the king requiring such a slender matter so easily to be done; for they were not enjoined to read, but only to send about and disperse it: yet this they would not do. It concluded with the king's counsel.

Then my lord chief justice summing up the business, was favourable to the bishops in the former part of the trial, and could not say the matter of fact was fully proved upon them, but was inclined to make the petition a libel; because of its accusing the king of flaws in government. He said but little to oppose what had been brought by the bishops' counsel against the declaration and dispensing power.

After him spoke judge Holloway, and very much in the bishops behalf, giving it as his judgment, that it could not be a libel, being done from a conviction of conscience by such persons in such an humble, modest manner.

Then judge Powell spoke to the same effect, giving it as his opinion, that it could not be a libel, being the only way to redress themselves. He had also some smart expressions to confirm what the bishops' counsel had urged against the declaration and dispensing power: so that judge Powell gave his opinion also in favour of the bishops.

Then judge Allibon standing up, professed he would not meddle with the dispensing power (though it had been so much canvassed against) but would only speak to the business of the paper being a libel; and he did accordingly, urging it to be so, not barely because it was a petition: for, said he, any one under grievance may petition his majesty, but not about affairs of government, for that would tend to very bad consequences, and promote discontents or worse in the nation. Nor (as he added) can the pretended fairness, as to the manner of it, be an excuse; for the more it hath that way, so much the worse; and so concluded it in his sense a libel. But urging a precedent to confirm what he had said, he was partly mistaken in it, as judge Powell and the bishops' counsel shewed him.

Then the court broke up, the jury went together, and the bishops, with all the privacy they could, to their respective abodes; but wherever the people met with them, they huzza'd and humm'd them in great abundance. There was a prodigious full court and hall, a very great many of the peers and nobility present; and also the bishop of Chester, of whom they took no kind of notice: the bishop of Rochester did not meet with much better regard.

The jury sate up all night, though they

were very soon unanimous in their verdict, which they prudently resolved to give in open court; and accordingly next day about nine or ten they brought them in Not Guilty.

The Names of the Lord Bishops' Counsellors.

Sir Fran. Pemberton, Mr. Pollixfin,
Sir Creswell Levins, Mr. Treby,
Sir Robert Sawyer, Mr. Summers,
Mr. Finch.

[Here follow the names of the Jurors, see ante.]

Letter to the Archbishop from the Bishop of Norwich.

Nor. July 2, 1688.

May it please your Grace;

To give me leave, among the thousands in these parts, heartily to congratulate with you, and your late companions in trouble, for the most joyful and most acceptable news we had this day by the post; namely, your acquittal from the crime endeavoured to be fixed upon you. I do assure your grace it hath mightily revived our drooping spirits; and I beseech God to make us all truly sensible of and sincerely thankful for so great a mercy. I know your grace hath now work enough upon your hands; and therefore it would be the greatest impertinency to interrupt you in those great affairs: wherefore I heartily bless God for your safety, and thereby for his great and singular mercies vouchsafed to his church, and am as in duty bound, Your grace's most obedient servant to command,

WILLIAM NORWICH.

Letter to the Archbishop from sir George Mackenzie.

May it please your Grace;

It will doubtless be strange news to hear that the bishops of England are in great veneration amongst the Presbyterians of Scotland, and I am glad that reason has retained so much of its old empire amongst men. But I hope it will be no news to your grace to hear, that no man was more concerned in the safety of your consciences and persons than may it please your grace your grace's most humble servant,

GEO. MACKENZIE.

The bearers will give you a just account of our affairs.

Memorand. and Directions, &c.

1. Heads for instructions.
2. An answer to the 4 bishops letter.
3. Establish a correspondence.
4. A history of the persecution.
5. How to demean ourselves in a case of a Popish visitation.

The way of writing to the archbishop is for every man to write to a private friend, and for him to deliver the letter to my lord archbishop.

St. Asaph to the lady Salisbury at Llweny.

Elie to Mrs. Nalson at Ely.

—to madam Womock at Elie—in a woman's hand—with a whimwham.

Chichester—Mr. Lever, or Mrs. Elizabeth Row, at Chichester.

Bath and Wells—Mr. Salmon, mercer, in Wells.

Peterburgh—Mrs. Clarke, at Dosthorpe, near Peterburgh.

Bristol—Mr. George Hart, merchant, in Bristol—or Mr. John Canne, merchant there.

Gloucester—Mr. Sam. Eckley, apoth.

An answer to be made to the Pastoral Letter.

Every man to advise with the chancellor and common lawyers what method to be used to obviate the invasion of our jurisdiction by the 4 vicars apostolical, and return it to my lord archbishop on Saturday next.

This is referred to the bishops of London and Peterburgh.

To prepare materials for a History of the Persecution; by consulting the registries and causing copies to be made of them.

Mr. Pullford, minister of Layton Buzzard, to be remembered for his extraordinary pains in his living.

THE ARTICLES recommended by the Archbishop of Canterbury to all the Bishops within his Metropolitan Jurisdiction, the 16th July, 1688.

Sir; Yesterday the archbishop of Canterbury delivered the articles which I send you inclosed, to those bishops who are present in this place; and ordered copies of them to be likewise sent in his name to the absent bishops. By the contents of them, you will see that the storm in which he is, does not frighten him from doing his duty; but rather awakens him to do it with so much the more vigour: and indeed, the zeal that he expresses in these articles, both against the corruptions of the Church of Rome on the one hand, and the unhappy differences that are among Protestants on the other, are such apostolical things, that all good men rejoice to see so great a prelate at the head of our church, who in this critical time has had the courage to do his duty in so signal a manner. I am, Sir, yours.

London, July 27, 1688.

Some HEADS of things to be more fully insisted upon by the Bishops in their Addresses to the Clergy and People of their respective Dioceses.

I. That the clergy often read over the forms of their ordination; and seriously consider, what solemn vows and professions they made therein to God and his Church, together with the several oaths and subscriptions they have taken and made upon divers occasions.

II. That in compliance with those and other obligations, they be active and zealous in all the parts and instances of their duty, and especially strict and exact in all holy converse—

tion, that so they may become examples to the flock.

III. To this end, that they be constantly resident upon their cures in their incumbent houses; and keep sober hospitality there according to their ability.

IV. That they diligently catechise the children and youth of their parishes (as the rubrick of the Common Prayer-Book, and the 59th Canon injoin) and so prepare them to be brought in due time to Confirmation, when there shall be opportunity: and that they also at the same time expound the grounds of religion and the common Christianity, in the method of the Catechism, for the instruction and benefit of the whole parish, teaching them what they are to believe, and what to do, and what to pray for; and particularly often and earnestly inculcating upon them the importance and obligation of their baptismal vows.

V. That they perform the daily office publicly (with all decency, affection, and gravity) in all market and other great towns, and even in villages, and less populous places, bring people to public prayers as frequently as may be; especially on such days and at such times as the Rubrick and Canons appoint; on Holy Days, and their Eves, on Ember and Rogation Days, on Wednesdays and Fridays in each week, especially in Advent and Lent.

VI. That they use their utmost endeavour, both in their Sermons, and by private applications, to prevail with such of their flock as are of competent age, to receive frequently the Holy Communion: and to this end, that they administer it in the greater towns once in every month, and even in the lesser too, if Communicants may be procured, or however as often as they may: and that they take all due care, both by preaching and otherwise, to prepare all for the worthy receiving of it.

VII. That in their Sermons they teach and inform their people (four times a year at the least, as the first Canon requires) that all usurped and foreign jurisdiction is for most just causes taken away and abolished in this realm, and no manner of obedience or subjection due to the same, or to any that pretend to act by virtue of it: but that the king's power being in his dominions highest under God, they upon all occasions persuade the people to loyalty and obedience to his majesty in all things lawful, and to patient submission in the rest; promoting (as far as in them lies) the public peace and quiet of the world.

VIII. That they maintain fair correspondence (full of the kindest respects of all sorts) with the gentry and persons of quality in their neighbourhood, as being sensible what seasonable assistance and countenance this poor church hath received from them in her necessities.

IX. That they often exhort all those of our communion, to continue stedfast to the end in their most Holy Faith, and constant to their profession; and to that end, to take heed of all seducers, and especially of Popish Emis-

saries, who are now in great numbers gone forth amongst them, and more busy and active than ever. And that they take all occasions to convince our own, that it is not enough for them to be members of an excellent church, rightly and duly reformed, both in faith and worship, unless they do also reform and amend their own lives, and so order their conversation in all things as becomes the gospel of Christ.

X. And forasmuch as those Romish Emissaries, like the old serpent, *insidiantur Calca-neo*, are wont to be most busy and troublesome to our people at the end of their lives, labouring to unsettle and perplex them in time of sickness, and at the hour of death; that therefore all who have the cure of souls, be more especially vigilant over them at that dangerous season; that they stay not till they be sent for, but inquire out the sick in their respective parishes, and visit them frequently: that they examine them particularly concerning the state of their souls, and instruct them in their duties, and settle them in their doubts, and comfort them in their sorrows and sufferings, and pray often with them and for them; and by all the methods which our Church prescribes, prepare them for the due and worthy receiving of the Holy Eucharist, the pledge of their happy resurrection: thus with their utmost diligence watching over every sheep within their fold (especially in that critical moment) lest those evening wolves devour them.

XI. That they also walk in wisdom towards those that are not of our communion: and if there be in their parishes any such, that they neglect not frequently to confer with them in the spirit of meekness, seeking by all good ways and means to gain and win them over to our communion: more especially that they have a very tender regard to our brethren the Protestant Dissenters; that upon occasion offered, they visit them at their houses, and receive them kindly at their own, and treat them fairly wherever they meet them, discoursing calmly and civilly with them; persuading them (if it may be) to a full compliance with our Church, or at least, that 'whereto we have already attained, we may all walk by the same rule, and mind the same thing.' And in order hereunto that they take all opportunities of assuring and convincing them, that the bishops of this church are really and sincerely irreconcilable enemies to the errors, superstitions, idolatries, and tyrannies of the Church of Rome; and that the very unkind jealousies, which some have had of us to the contrary, were altogether groundless.

And in the last place, that they warmly and most affectionately exhort them, to join with us in daily fervent prayer to the God of peace, for an universal blessed union of all Reformed Churches, both at home and abroad, against our common enemies; that all they who do confess the holy name of our dear Lord, and do

agree in the truth of his holy word, may also meet in one holy communion; and live in perfect unity and godly love.

Mr. Maurice's Draught of an Answer to the four titular Bishops.

1. Forasmuch as it is the duty of a watchman, as soon as the enemy begins to appear, to give notice, and alarm those, whose safety is committed to his charge: I cannot but hold myself indispensably obliged (considering the station in which it hath pleased God to place me in this church, and the circumstances of the present time) to give warning to all those, who belong to my care, that many deceivers are gone forth amongst them; and are no longer content, as heretofore, to creep secretly into houses, and to lead captive silly people, laden with sins, and by the corruptness of their minds, or the wickedness of their lives, fitted and prepared for such seduction; but begin now to take the confidence of publicly owning themselves, and their ungodly designs, in the face of the world, and to the amazement of this whole nation. It is time for every true shepherd, when he sees the wolves breaking in upon the flock, to be ready, after the example of our great pastor, to oppose and withstand them, and even to lay down his life for the sheep. He is but a hireling, and betrays himself to be such, who has so little concern for his flock, that he flies from danger, when it comes, and prefers even life itself to their safety and preservation.

2. Among these deceivers there are four persons, exceeding all the rest in confidence, who assume to themselves the titles of bishops of remote places,* where they have no flocks; and under the pretence of being the pope's vicars in this realm, address themselves to a party of men, styled by them Lay-Catholics; who separate themselves indeed from our communion, but yet in right, and according to the laws of this land, and the discipline of the primitive church, belong to our care: these four (I say) under the pretence of Papal auctority, justly and legally abolished in this kingdom, take upon them now to confirm, and harden those mistaken men in their errors; and to that purpose having (it seems) divided the whole kingdom betwixt themselves "before they separate themselves to enter upon their respective provinces" (as they speak) have thought fit to print and publish a writing, under the title of a Pastoral Letter; with directions to those of their party, not only to continue in their former mistakes, but also to use all means for the seducing of others. So that there lies an absolute necessity upon us, to warn and admonish all the people of this land, who either of due right, or actual communion, appertain to

* Names of the four bishops: John bishop of Adramite: V. A. Bonaventure bishop of Madaura: V. A. Philip bishop of Aureliople: V. A. John bishop of Callipoli: V. A.

us, that they have no fellowship with these deceivers and corrupters of the faith of our Lord Jesus Christ, that they pay them no subjection, no not for an hour; seeing they have no auctority over any persons here, either from our Lord Christ, or his apostles, or from any order of the primitive church; and stand condemned by the laws of this kingdom, as enemies to the supreme power of the king, to the ancient liberties of the Britannic church, and to the peace and welfare of the nation.

[Thus far in the Archbishop's hand.]

3. Those therefore to whom they address themselves under the style of Lay-Catholics, in the first place I exhort and beseech in the Lord Jesus, and in the bowels and tenderness of a fatherly affection, that they would examine themselves, whether they be in the faith; that they would search diligently into the fountains of life, and read and study the holy scriptures, that can make us wise unto salvation; that they would compare with these the pretended auctority, and the doctrine of these Papal vicars; and lastly, that they would impartially use such assistances for the discovering of the truth, as the grace of God offers them at this time, in so many excellent treatises upon the points in dispute between the Roman Church and us. My dear brethren, be not deceived; God is not mocked. He will require at your hands all those opportunities of knowledge, he will exact an account of all those advantages, which his goodness has offered to you: it is not with you as with those of their persuasion in Spain or Italy: they have excuses for their ignorance or mistakes, which you cannot pretend: but you whom God has placed in the midst of so great light are utterly inexcusable, if you love darkness better than light. Or if you will not hearken to my voice, I will direct it to God on your behalf, beseeching him, through the intercession of our dear and common Lord, that he would remove your prejudices; that he would open your eyes, and bless you with the knowledge of the truth, as it is in Jesus; that ye may be knit in one fellowship with us: and truly our fellowship is with the Father and his son Jesus Christ.

4. But to those who profess the same common faith with us I apply myself with greater assurance. I have that confidence in you all, that, at this time especially, you will hearken to the voice of your shepherd; whose concern for you is more strong and affectionate than for life itself. I account nothing dear to me in comparison of your salvation; and this is my joy, this is my greatest dignity, if you stand fast in the faith, once delivered to the saints, and now professed by you. Beware of deceivers who are gone abroad, and proclaim to the world their design to shake you from your steadfastness. In order to stand firm against all the arts of these seducers, take to you the "whole armour of God," recommended to you by St. Paul, the great archbishop of the Gentiles; take "the sword of the spirit which is

the word of God ;" this will easily cut asunder all the knots of sophistry ; this will overcome and bear down all the subtilty and fallacy of seducers : let not the Holy Bible depart out of your hands, nor out of your minds ; " hear, read, mark, learn, and inwardly digest it." So shall ye be free from all infection of error, and remain firm and unshaken amidst all the contrary winds of vain and false doctrine: make use of those great advantages of knowledge which the divine goodness has put into your hands: attend to the preaching and writing of those who are over you in the Lord: attend diligently upon public prayer, and be earnest suppliants to God, that he would preserve his church and household here continually in the true religion. And though we must acknowledge, that we have rendered ourselves unworthy of his saving truth, having held it so long in unrighteousness, yet let us instantly beseech him that he would correct us for our sins with any judgment, so that dreadful final one do not overtake us ; so he do not utterly forsake us, and deprive us of his truth.

5. Let patience be your shield against the insolence of your enemies: suffer not yourselves to be provoked out of your duty towards God and the king ; and let not the weakness of an insolent adversary tempt you to do any thing against the rules of the Christian religion. " But above all things have charity towards all men: love your enemies, bless them that curse you, pray for them that revile and persecute you ; so shall ye be the children of your father which is in heaven." But be sure ye have perfect charity among yourselves, and remember, that ye " fall not out by the way, for you are brethren." And as you are united in one faith, so may your hearts be knit together in brotherly love. Support the weak, confirm the wavering, instruct the ignorant, comfort the afflicted, relieve the poor, rebuke the sinner, and edify one another in love. Let not your conversation be a disgrace to your faith, and a scandal to the weak, but let your lives be answerable to so holy a profession: for if you give yourself licence to sin, it is not likely your faith will be long uncorrupt ; a wicked life disposes a man naturally to change for advantage: for since the sinner can take but little pleasure in religion, he will quickly grow indifferent, and be disposed to chuse that which comes attended with the greatest worldly profit.

6. Have a singular tenderness for those who, holding the substance of reformed Christianity with us, stand yet divided from us. As far as we have attained, let us speak the same thing, and let us pray to God, that he would unite us into one fold, that we may walk in the same house of God as friends. And now my Protestant brethren, though differing from us in lesser matters, I will direct my speech unto you in the spirit of meekness and charity.

Doubtless you are our brethren, and children of the same father: we call upon the same God, through the intercession of the same

Christ. We direct not worship to saints or angels: we fall not down before any images of Christ or his glorified servants: we worship not the sacraments of Christ's passion as God: we deceive not ourselves with expectation of purgatory fires after this life, nor plead any merit with God, whose unprofitable servants we must confess ourselves to be. We equally renounce all foreign jurisdiction, as contrary to Christian discipline, and the privileges and independence of this church and nation. Having then the same substance of faith, the same sacraments, the same Christ, let us unanimously join in the preservation of that common faith, and not suffer ourselves to be divided by our enemies, who being of themselves destitute of force to overthrow our religion, have no way left to compass their designs upon us, but to divide us among ourselves, and to make us the instruments of our mutual destruction. My brethren I believe better things of you, and will conclude with my prayers to God for you: that he would direct your way, and enlarge your hearts towards us, for our bowels are not streightened towards you: that he would speak peace and unity to us all: that he would preserve us all from corruptions of the faith, and superstition in worship: that he would ever protect us from the tyranny of the Roman bishop, which our fathers, after a sad and long enduring, were no longer able to bear: and if for our sins we cannot attain to the desired blessing of a perfect fellowship, yet as far as we have attained, let us encourage and assist one another, and be ever united in all the good offices of Christian affection and charity.

Copy of an ADDRESS to the King from the Bishops; in the Archbishop's hand.*

To the King's most excellent Majesty ;

The humble Address of the Bishops, who were by his majesty's order lately summoned to attend him.

May it please your Majesty ;

Being sad at the heart for the many great distractions, and disaffections, which we find every where in the minds of your people ; and being most heartily desirous (according to the duty we owe to God and your majesty) to do all that we can to remove them ; we do hereby crave leave, with all humility, to propound to your majesty the following expedients, which, if you please to hearken to, (we think in our consciences) effectually will, and we are sure only can restore to your majesty the hearts of your people, and quiet and compose their minds: viz.

1. And first in general, if you would please

* It is related, that upon receipt of the prince of Orang's Declaration, king James exclaimed, " We shall now see what the Church of England will do." He soon had reason to repent of the contemptuous disregard with which he had received the friendly warning of bishop Morley. See Vol. 8, p. 1016.

to restore the government, and the whole management of it to that state, and put it into those hands of the nobility and gentry in each county, in which it was, when your majesty first came to the crown.

2. If you would often remember and consider that excellent speech which you made to the privy council, when you first sate down in your chair there, and which you after repeated to the lords and commons at the opening of your first parliament; in which your majesty was pleased to declare, that you would support the Church of England, for you knew her principles, and complained, that you were misrepresented as a man of arbitrary principles; whereas you knew, that the laws are sufficient to make the monarch as great as you desired to be.

3. If you would please often to read over, and in the fear of God seriously to consider the tenor and importance of your coronation oath, in which you swear solemnly before God, and angels, and men, that you would keep and confirm the laws and customs granted by the kings your predecessors to the people and to the clergy of England, according to the laws of God, and the true profession of the gospel established in this kingdom, &c.

4. In consequence of these obligations, if you would please to annul your high commission for ecclesiastical affairs; as being evidently contrary to two acts of parliament.

5. If you would please effectually to revoke all dispensations, and letters mandatory, or recommendatory, by virtue whereof any not duly qualified by law hath been put into or continued in any place or office, or preferment, in church or state, or in the universities; especially which have the cure of souls annexed to them.

6. Particularly if you would please to restore the president and fellows of the college of St. Mary Magdalen in Oxford to their just and undoubted rights; and permit them to resettle that college according to their statutes, and the laws of the land.

7. If you would please by your royal proclamation to inhibit the four Romish bishops, who style themselves vicars apostolical, and by a foreign auctority, not derived from your crown, ride circuit in the land, and have presumed to cantonize this your kingdom into four provinces, and to divide it among themselves; (having printed maps of it accordingly) exercising therein a jurisdiction, of which the respective bishops have been long possess, and which by the laws of England belongs unquestionably to them; whom your majesty hath often declared (and even in your declaration of Ap. 4, 1687,) that you will protect, and maintain in the quiet and full enjoyment of all their rights and possessions, without any molestation or disturbance whatsoever.

8. That you would please to revoke all licences, or faculties, by which any person, who is not of the communion of the Church of England, pretend to be enabled to teach public

schools, and thereby endanger the corrupting the principles of the youth of the nation.

9. If your majesty would please by your proclamation strictly to command all jesuits, and seminary or missionary priests (who go about continually in great swarms, labouring to perplex, and unsettle, and seduce your good people) immediately to depart out of all your dominions, and not to return, but under the penalty of the law: and particularly, that Mr. Edward Petre be forthwith sent away, and not permitted any longer to sit in your councils, or to be so near your person, to the great and just scandal and scorn of your best subjects, and of the whole nation.

10. If you would please to refer the whole matter, and all the points of your late Declaration for Liberty of Conscience (in and by which so many of the laws of the land, and those of the highest concernment are manifestly violated and invaded) to be debated, adjusted, and finally settled by your majesty, and the three estates of the realm, in a free and regular parliament, in whom alone the power of making, and repealing laws, and the whole legislature of this realm, is legally settled.

11. And that this may be done, and the rest of these expedients (so far as shall be thought fitting) farther considered, confirmed, and finally settled, and that with all convenient speed, as the weightiness of the matter requires; if your majesty would please as soon as may be to cause a parliament to be summoned; and to the end that it may be free, and the representatives that are to serve in it duly and fairly chosen; to supersede all farther prosecution upon quo warrantos or otherwise; and restore all corporations (the city of London especially, and in the first place) to their former and ancient charters, immunities, privileges, and franchises, according to the laws.

These things, if it shall please Almighty God, in who's hands the hearts of kings are, to incline your majesty to do; we doubt not yet—

An Account of the Bishops presenting an Address to the King, with Ten Advices.

My Lord; Whitehall, Sept. 24, 1688.

The king thinking it requisite to speak with your grace, and several others of the bishops, who are within a convenient distance of this place, his majesty commands me to acquaint you, that he would have you attend him upon Friday next, at ten in the morning. I am my lord, your grace's, &c. SUNDERLAND. P.

Lord Archbishop of Canterbury.

Letters to the same purpose, and of the same date (or about that time) were sent to the bishops of London, Winchester, Elie, Chichester, Bath and Wells, Peterburgh, Bristol, and Rochester; and all which (but London and Bristol) came to town; and all (but the archbishop) waited on the king at the time appointed. The next day the bishop of Winchester went

out of town, and the day after that the archbishop waited upon the king alone: and by his appointment on Wednesday Oct. 3d, all, who remained in town, went together to his majesty; to whom (in the name of the rest) the archbishop spake, as followeth:

May it please your sacred Majesty;

When I had lately the honour to wait upon you, you were pleased briefly to acquaint me with what had past two days before between your majesty and these my reverend brethren: by which, and by the account which they themselves gave me, I perceived, that in truth there past nothing, but in very general terms, and expressions of your majesty's gracious and favourable inclinations to the Church of England, and of our reciprocal duty, and loyalty to your majesty: both which were sufficiently understood, and declared before; and (as one* of my brethren then told you) would have been in the same state, if the bishops had not stirred one foot out of their dioceses. Sir, I found, it grieved my lords the bishops to have come so far, and to have done so little: and I am assured, they came then prepared to have given your majesty some more particular instances of their duty, and zeal for your service; had they not apprehended from some words, which fell from your majesty, that you were not then at leisure to receive them. It was for this reason, that I then besought your majesty to command us once more to attend you all together, which your majesty was pleased graciously to allow and encourage. We are therefore here now before you, with all humility to beg your permission, that we may suggest to your majesty such advices as we think proper at this season, and conducing to your service, and so leave them to your princely consideration.—Which the king being pleased graciously to permit, the archbishop proceeded, as followeth. Our first humble advice is;

1. That your majesty will be graciously pleased to put the management of your government in the several counties into the hands of such of the nobility and gentry there, as are legally qualified for it.

2. That your majesty will be graciously pleased to annul your commission for ecclesiastical affairs; and that no such court, as that commission sett up, may be erected for the future.

3. That your majesty will be graciously pleased that no dispensation may be granted, or continued, by virtue whereof any person, not duly qualified by law, hath been or may be put into any place, office, or preferment in church or state, or in the universities, or continued in the same; especially such as have cure of souls annex to them: and in particular, that you will be graciously pleased to restore the president and fellows of St. Mary-Magdalen-college, in Oxford.†

* Bishop of Bath and Wells.

† See the Case, p. 1. of this Volume.

4. That your majesty will be graciously pleased to set aside all licences, or faculties already granted, by which any persons of the Romish communion may pretend to be enabled to teach public schools; and that no such be granted for the future.

5. That your majesty will be graciously pleased to desist from the exercise of such a dispensing power as hath of late been used; and to permit that point to be freely and calmly debated, and argued, and finally settled in parliament.

6. That your majesty will be graciously pleased to inhibit the four foreign bishops, who stile themselves vicars apostolical, from farther invading the ecclesiastical jurisdiction, which is by law vested in the bishops of this church.

7. That your majesty will be graciously pleased to fill the vacant bishopricks, and other ecclesiastical promotions within your gift, both in England and Ireland, with men of learning and piety: and in particular (which I must own to be my peculiar boldness, for it is done without the privity of my brethren) that you will be graciously pleased forthwith to fill the archiepiscopall chair of York (which hath so long stood empty,* and upon which a whole province depends) with some very worthy person: for which (pardon me, Sir, if I am bold to say) you have here now before you a very fair choice.

8. That your majesty will be graciously pleased to supersede all farther prosecution of quo warrantos against corporations, and to restore to them their ancient charters, privileges and franchises, as we hear God hath put it into your majesty's heart to do for the city of London; which we intended to have made otherwise one of our principal requests.†

9. That if it so please your majesty, writs may be issued out with convenient speed, for the calling of a free and regular parliament; in which the church of England may be secured according to the acts of uniformity; provision may be made for a due liberty of conscience, and for securing the liberties and properties of all your subjects; and a mutual confidence, and good understanding may be established between your majesty and all your people.

10. Above all, that your majesty will be graciously pleased to permit your bishops to offer you such motives and arguments, as (we trust) may by God's grace be effectual to persuade your majesty to return to the communion of the church of England: into who's most Catholic faith you were baptized, and in which you were educated, and to which it is

*According to Wellwood (see a note to lord Castlemaine's Case, A. D. 1689,) the archbishoprick of York was so long kept vacant from want of a dispensation of the statutes of the Jesuit's order to father Petre to enjoy a bishoprick.

† See in this Collection the Case of the city of London, vol. 8, p. 1039.

our daily earnest prayer to God, that you may be re-united.

These (Sir) are the humble advices, which out of conscience of the duty we owe to God, to your majesty and to our country, we think fit at this time to offer to your majesty, as suitable to the present state of your affairs, and most conducing to your service, and so to leave them to your princely consideration. And we heartily beseech Almighty God, "in who's hand the hearts of all kings are, so to dispose, and govern yours, that in all your thoughts, words, and works you may ever seek his honour and glory, and study to preserve the people committed to your charge in wealth, peace, and godliness;" to your own both temporal and eternal happiness. Amen.

We also do heartily concur.

H. LONDON.

P. WINCHESTER.

W. ASAPH.

W. CANT.

FRAN. ELY.

JO. CICESTR.

THO. ROFFEN.

THO. BATH }

& WELLS, }

T. PETRIBURG.*

* "These proposals would at another time have raised the king's indignation, but the necessity of his affairs obliged him now to thank their lordships, and to promise that he would comply with them. Accordingly on October 5, 'His majesty was graciously pleased to declare in council, that in pursuance of his resolution and intention to protect the church of England, and that all suspicions and jealousies to the contrary may be removed, he had thought fit to dissolve the commission for causes ecclesiastical, and accordingly did give directions to the lord-chancellor to cause the same to be forthwith done.' And on Oct. 10, It was farther declared, 'That his majesty having received several complaints of great abuses and irregularities committed in the late regulations of the corporations, has thought fit to authorize and require the lords-lieutenants of the several counties, to inform themselves of all such abuses and irregularities within their lieutenancies, and to make forthwith report thereof to his majesty, together with what they conceive fit to be done for redressing the same; whereupon his majesty will give such further orders as shall be requisite.' On Oct. 12, It was again published from Whitehall, 'That the king having declared his resolution to preserve the church of England in all its rights and immunities, his majesty, as an evidence of it, has signify'd his pleasure to the right reverend father in God, the lord bishop of Winchester, as visitor of St. Mary Magdalen-College in Oxford, to settle that society regularly and statutably.'

"On Oct. 17, The king published a proclamation for restoring corporations to their ancient charters, liberties, rights and franchises. And orders of the council were the same day made for removing and displacing all mayors,

Letter to the Archbishop from F. E.

[FRAN. ELY.]

Seven at Night.

May it please your Grace;

Just now Mr. Thinne brings me a message from lord Godolphin (whose credit is great at this time) that the king and court seem to wonder that they received no farther applications from the bishops to-day; adding, that it was my lord Godolphin's opinion, That whatever now was fit to be asked by us we might have it granted, at least by degrees, therefore we ought to be plain, and propose most humbly and as a necessary discharge of our duty to his majesty, whatever we thought necessary for the public security.

This I thought fit to impart for your grace's consolation: but, good my lord, press for expedition with some such kind expression as this, that otherwise the trap will be fallen upon us ere we are aware.

We discoursed Mr. Thinne upon their fatal inadvertency for excepting all the clergy, by immediate consequence, out of the general

sheriffs, recorders, town-clerks, aldermen, common-councilmen, &c. which had been put in by the late king, or his present majesty, ever since the year 1679." Kennet.

When the approach of the storm became very sensible, bishop Sprat discontinued to act as one of the Ecclesiastical Commissioners, and addressed the following letter 'To the right hon. my Lords of his Majesty's Commission Ecclesiastical.'

"I most humbly intreat your lordships' favourable interpretation of what I now write, that, since your lordships are resolved to proceed against those who have not complied with the king's command in reading his declaration, it is absolutely impossible for me to serve his majesty any longer in this commission: I beg leave to tell your lordships, that though I myself did submit in that particular, yet I will never be any way instrumental in punishing those my brethren that did not. For, as I call God to witness, that what I did was merely in a principle of conscience, so I am fully satisfied that their forbearance was upon the same principle. I have no reason to think otherwise of the whole body of our clergy, who, upon all occasions, have signalized their loyalty to the crown, and their zealous affections to his present majesty's person, in the worst of times. Now, my lords, the safety of the whole church of England seeming to be exceedingly concerned in this prosecution, I must declare, I cannot with a safe conscience sit or judge in this cause upon so many pious and excellent men, with whom (if it be God's will) it rather becomes me to suffer, than to be in the least occasion to their sufferings. I therefore earnestly request your lordships to intercede with his majesty, that I may be graciously dismissed from any further attendance at your

pardon. He stood amazed and ran away to Whitehall about it before the council should rise.

I must be so just to lord Clarendon as to add this one memoir, that not only one Irish archbishoprick, with three bishopricks there, but

board; and to assure him, that I am still ready to sacrifice whatever I have to his service but my conscience and religion. My lords, I am your lordships' most faithful and obedient servant,
"THO. ROCHESTER."

In vol. 9, p. 263, mention is made of Sprat's employment to draw up prayers for king James's queen and for the prince of Orange. In the *Collectanea Curiosa*, I find this subservient favorite of Charles and James in prayer, solemnly ejaculating of the very first day of king William's landing, "This is the day which the Lord hath made: we will rejoice and be glad in it."

Letter to the Bishop of London from the Bishop of Rochester [Thomas Sprat]: relating to an alteration in the 5th of November office, 1689.

From the original under bishop Sprat's hand, penes S. Knight. For my lord bishop of London.

My Lord;

I suppose you received the message which I left yesterday morning with my lord bishop of Chichester for your lordship: that considering the shortness of time, I could not alone undertake to accommodate the whole fifth of November office to the present occasion, but that I would do something towards it. Now, my lord, I send you here what alterations seem to me to be most necessary, and withal a new collect to be said in the morning prayer, and repeated in the second service, unless you shall be better provided

So that if your lordship shall admit what I have done, there remains but one prayer more to be made for the end of the Litany, which as I told my lord of Chichester, I hope your lordship will be quickly furnished with from better hands.

By reason of some indisposition of body, and some domestic business, I shall not be able to wait on your lordship till Thursday morning at the House of Lords. My lord, I am, &c.

Bromley, Oct. 27, 1689. THO. ROFFEN.

Since I wrote the former I have ventured at a Prayer to be used at the end of the Litany, which has occasioned the blots that I desire your lordship to excuse.

The sentences which begin morning prayer must necessarily be altered, and instead of them these following may seem proper to be used.—
Ps. 118:

V. 23. "This is the Lord's doing and it is marvellous in our eyes."

V. 24. "This is the day which the Lord hath made, we will rejoice and be glad in it."

all their deaneries, and every parsonage and vicarage that has fallen in the gift of the crown, since Tirconnel's regency, is kept void in Ireland.

God's holy spirit guide your grace and grant

V. 28. "Thou art my God, and I will praise thee, thou art my God, and I will exalt thee."

For "O come let us sing unto the Lord," Ps. 95, perhaps the 96th Psalm may serve better as a proper hymn. The other Psalms will do well as before. In the lessons, epistle and gospel, I cannot see any thing to be altered, unless you can find a fitter second lesson and gospel.

All the old prayers and collects must be so far changed, as to make them fit for the present occasion, which may be done by the alteration of a word or two in each.

After the two collects in the morning prayer, which are in the old book, a distinct collect may be added to this purpose, which may be also repeated in the second service.

O God whose name is excellent in all the earth, and thy glory above the heavens, who on this day didst miraculously preserve our Church and State*

[forefathers] from the secret contrivance and hellish malice of Popish conspirators; and on

this day also didst [begin to give] us a mighty deliverance from the open tyranny and oppression of the same cruel and blood-thirsty faction.
[enemies.]

We bless and adore thy glorious majesty, as for the former, so for this thy late marvellous loving kindness [in the preservation of our religion and liberties.] And we humbly pray,

that the devout sense of this thy repeated mercy may renew and increase in us a spirit of [love] and thankfulness to thee its only author; a

spirit of [peaceable submission] to our gracious sovereign, whom thou madest the blessed instrument of it; and a spirit of fervent zeal for pure and undefiled

our [holy] religion, which now again thou hast so wonderfully rescued, and established a blessing to us and our posterity. And this we beg for Jesus Christ his sake. Amen.

At the end of the Litany something may be said to this effect.

Most gracious God, and heavenly father, who by thy all wise providence hast ordained the appointed times and seasons of all things, and hast made this day to be for ever fa-

mous and renowned in [this Church] for the two signal preservations thou hast wrought and for our blessed reformation upon it.

[on us and our holy religion.] Grant, we beseech thee, that we may approve ourselves so worthy of these glorious mercies, by adorning

* The interlineations by bishop Patrick.

you favour in the sight of his majesty ! May you, my good lord, perform *fortiter in re, suaviter in modo*. God send your grace a good night and a happy morning. I am your obliged and obedient servant,

F. E.

Letter to the Archbishop from the Bishops of Rochester and Peterborough.

May it please your Grace ;
Having waited upon my lord chancellor we

in all things the holy reformed doctrine we shall profess*, that the gates of hell [may] never prevail against this church which thy own right hand has planted, and thy out-stretched arm has so often defended amongst us, that thou mayst be with it always to the end of the world. *Amen.*

At length even Crew remonstrated with James.

1. *Letter from Bishop Crew to King James 2.*

“ To the King’s most excellent Majesty ; the most humble and faithful advice of your Majesty’s ever dutiful subject and servant the bishop of Durham.

“ That your majesty would be pleased to withdraw your protection of those Romish chapels, which are daily made the occasion of so much disturbance and mischief here, and if continued any longer, I fear, will unavoidably endanger the peace and safety of this your great city, and consequently of your whole kingdom.

“ That the archbishoprick of York, which your majesty hath been pleased to offer me, may be filled with some other more deserving person : and that your majesty would be pleased to make another dean of Christ Church in Oxford, instead of Mr. Massey, who is utterly incapable thereof by law : That the fellows of Sidney College in Cambridge, for whom I have so often moved your majesty, may have leave to elect a new master, in the place of Mr. Bassett (he being also unqualified on the same account) and to proceed on all other affairs relating to that society, according to their original statutes and constitutions.

“ That your majesty would be pleased to call a free parliament so soon as may be, this being the only probable means for preserving your sacred person, for preventing the effusion of Christian blood, and for establishing your throne and government, both in church and state, upon sure and lasting foundations.

“ N. DURHAM.”

Kennet, after relating what passed between the king and the bishops concerning the required abhorrence, says, that after that time Crew came no more to the council board, and that he represented to Sancroft, his sorrow for having concurred so far as he had done in the king’s measures.

* And let all the enemies of thy sacred truth know and confess.

have acquainted him with the objection in the proclamation of pardon, who tells us, tis the usual expression in all acts of pardon, and that we are included therein, and that the king has already been told of it by my lord Godolphin this evening ; and therefore ’tis thought advisable that your grace should not mention it at all, or else very slightly to pass it over. This we think reasonable should be imparted to your grace by our good lord, your grace’s most obedient servants,

THO. ROFFEN,

THO. PETRIBURG.

A JOURNAL of what passed between the King and some of the Bishops, concerning an abhorrence of the designs of the Prince of Orange. 1688.

On Tuesday, October 16, the archbishop received a letter from Mr. Bridgeman, acquainting him, that the king desired to speak with him that morning, if his health would permit.

Whitehall, Oct. 16th. —88.

‘ My Lord ;

‘ I am directed to acquaint your grace, that his majesty desires to speak with you about 10 this morning, if your health will permit you to come. I am with great respect and submission, my lord, &c.

‘ W. BRIDGEMAN.’

‘ Lord Archbishop of Canterbury.’

He went over at ten of the clock, and was introduced to the king, who discoursed to him about many things : as about the restoring of Magdalen college in Oxford ; that the bishop of Winton mistook his letter, for he never meant to delay the visitation ; and about the restoring of the corporations, which, he said, should have been done the day before, had not the lawyers differed about the penning of the proclamation, &c.

The archbishop told him, that he had lately received a letter without a name, complaining of the ill state of the church in Ireland ; particularly, that four bishopricks had been long void there, the filling of which was the bishop’s 7th advice to his majesty ; and some other grievances, of all which the king desired to have a particular account sent to him, the archbishop not having the letter about him.

At last the king came to that, which may be supposed to have been his chief intention in sending for the archbishop ; sc. to tell him, that he had received certain intelligence, that the prince of Orange was coming to invade England, and to make a conquest of it, &c. ; and in fine, that it would be very much for his service, and a thing very well becoming the bishops, if they would meet together, and draw up an Abhorrence of this attempt of the prince, &c.

The archbishop told him, that, as soon as the bishops had waited upon him the last time together, they (supposing his majesty had no farther commands for them) made haste to return into their several dioceses ; so that there

were now none of them in town; the bishop of London being not yet come, and the bishop of Rochester being gone into Essex.

The king replied, that these two last named might quickly be found; and that he was told, that the bishop of Peterborough was still in town.

The archbishop answered, that it was more than he knew; for that bishop had bid him farewell some time before, saying, that he was going into the country: so that in all likelihood no considerable number of bishops could now be got together. Where it is to be noted, that the king did not at all mention the bishops of Chester, St. David's, &c.; though there was now so direct an occasion leading to it.

But the king still insisting upon his former proposal, the archbishop, asking first, and having his majesty's leave to speak freely, said, That there would be (he thought) no occasion for the bishops to make such a declaration; for, said he, I could never believe, nor do I yet, that the prince hath such a design: for which, being demanded, he gave several reasons, too long to be here inserted: and this was all that passed at that time concerning this matter.

On Wednesday, October 31st, the king ordered a letter to be sent by a messenger to the bishop of London at Fulham, commanding him forthwith to wait upon his majesty: but the bishop, having been abroad in the country, came not home till it was too late to do so.

'My Lord; Fulham, Oct. 31.

'I returned home so late this evening, that I could not hope of waiting upon the king this afternoon according to his commands. But understanding that the rest of your lordships were likewise sent for, I beg to know, only by word of mouth, what the matter is, that I may attend accordingly. My lord,

'Your grace's, &c. 'H. LONDON.
[Superscription.]

'To the most Rev. the Lord
Archbishop of Canterbury.'

On Thursday, Nov. 1st, the bishop of London waited on the king; and what passed between them the bishop thus relates in his letter, dated Nov. 6th: "When I waited on the king by his command on Thursday morning, Nov. 1st, he told me, That he had sent for me, when he had nothing but the Declaration of the States of Holland, but that the Declaration of the prince of Orange was now come to his hands; out of which he read to me the short paragraph of the lords spiritual and temporal inviting his highness over. Upon which I told him, I was confident, the rest of the bishops would as readily answer in the negative as myself: and his majesty was pleased then to say, he did believe us all innocent. Next he told me, he thought it requisite we should make some public declaration of our innocence in this matter, and likewise an abhorrence. I then desired to see the Declaration; but he re-

VOL. XII.

fused. I told him, this was a matter to be considered. Every one, said he, is to answer for himself: but I will send for my lord of Canterbury, who shall call you together."*

On the same day the archbishop received a summons from the earl of Middleton to wait upon the king (with the rest of the bishops) the next day, at ten o'clock in the morning.

'My Lord; Whitehall, Nov. 1, 1688.

'The king commands me to acquaint your grace, that he desires to speak with you at ten o'clock to-morrow morning, and that your grace would bring with you such others of my lords the bishops as are in town.

'I am, my lord, your grace's, &c.

'MIDDLETON.'

'Lord Archbishop of Canterbury.'

In obedience to which command, on Friday Nov. 2d, the archbishop went to Whitehall, and found in the king's bed-chamber the bishops of London, Duresm, Chester and St. David's: and they all being called into the closet to the king, he told them, That he had seized a person, who had brought into the city a great number of the prince of Orange's Declarations, and had begun to disperse them: for his majesty had received five or six copies from several persons, to whom they had been sent in penny-post letters, which he had thrown into the fire; but that he had still one copy (which the lord visc. Preston held in his hand; who had all this while, from the first coming in of the bishops, stood by the king:) in which, said the king to the bishops, there is a passage that concerns you; which he thereupon commanded the secretary to read to them, pointing to the places where he would have him begin and end. The sum of it was, That he, the said prince was coming to invade England being thereunto invited (among others of the English nation) by a great many of the lords both spiritual and temporal. Whereupon the king was pleased to say, That he did not believe a word of it; that he was fully satisfied of the bishops' innocency, and that it was a false accusation; notwithstanding that, he thought fit to acquaint them with it, and that this was the occasion of his sending for them at this time.

The archbishop having thanked the king for his good opinion, so frankly and graciously expressed, spoke to this purpose: that he owed to his majesty a natural allegiance, having been born in his kingdom; that he had oftentimes confirmed this by taking voluntarily the oaths of supremacy and allegiance, and could have at once but one king; that (as his majesty well knew) he never worshipped the rising sun, nor made court to any, but to his king; and to him he did, as often as he was pleased to receive it. And, as to this particular charge, and his personal concern in it, he averred it to be utterly false;† he having been so far from

* See the whole Letter, p. 507.

† Macpherson, in the first volume of his
2 K

inviting the said prince any way to make this attempt, that he never made any application to him: and farther, that he did not know, nor could believe, that any of his brethren the bishops had given the prince any such an invitation. The bishop of London said, he had given the king his answer the day before: the bishop of Duresm said, I am sure I am none of them. Nor I; Nor I; said the other two.

After this, the king, repeating more than once his former declaration, that he verily believed the whole charge to be a groundless aspersion upon the bishops, did nevertheless require, that some such denial should be published, saying, It would be for his service; yet would not allow time to send for the absent bishops, but commanded the archbishop to call together as many of the bishops as were at hand, and to consider with them, what was fit for them all to do, in order to the vindication of themselves from this accusation. The

“Original Papers,” has published the two following Articles as from Tanner’s MSS. in the Bodleian Library.

GEORGE (probably sir GEORGE) MACKENZIE to the Archbishop of CANTERBURY.—Hopes his Grace will disavow the Prince of Orange’s Declaration.

“May it please your Grace;

“We are strangely surprized with the prince of Orange’s Declaration, which seems, upon the misinformation of fanaticks, fled to Holland for to have accused all such as have served in the government of church and state here as criminal. We hope the worthy and pious prelates of the Church of England, will own the true interest of government and their friends; especially such as never exposed themselves nor their religion to sale, and whom neither fear nor flattery has influenced. I refer the state of our affairs to this bearer, who can make your grace understand them as well as if you had been in employment here; nor will there be any thing to be added, when you shall shortly see your grace’s most humble servant,
“GEO. MACKENZIE.”

The Archbishop of CANTERBURY disavows his ever inviting over the Prince of Orange.

“Whereas there hath been of late a general apprehension, that his highness the prince of Orange hath an intention to invade this kingdom, in hostile manner; and, as it is said, makes this one reason of his attempt, that he hath been thereunto invited, by several English lords, both spiritual and temporal; I William, bishop of Canterbury, do for my own discharge, profess and declare, that I never gave him any such invitation by word, writing, or otherwise; nor do I know, nor can believe, that any of my reverend brethren, the bishops, have in any such way invited him. And all this I aver, upon my word; and, in attestation thereof, have subscribed my name here, at Lambeth, the 3d day of Nov. 1688. W. C.”

archbishop told him, that there were no bishops at hand, (except those there present) but the bishop of Rochester; to whom he undertook to send that night, and to summon him in. Here the bishop of St. David’s interposed, and affirmed, that the bishop of Peterburgh was then in town; that he had been seen the day before in the Temple; and that he had inquired at his lodging, where so much was acknowledged. The archbishop told the king, it might possibly be so, but that he knew it not; and that if he could, he would find him out.

Then the king went on to say, that, when we met, if we should resolve upon a paper, or apology for ourselves in writing, before we did any thing farther in it, the archbishop should bring it to him (or rather send it, said he to the archbishop, for I would not endanger your health: for which his royal compassion the archbishop gave him thanks:) and then (he proceeded to say) it being approved by me, may by you (the metropolitan) be sent to the absent bishops for their concurrence.

All this while there was not one word spoken about the abhorrence. But at last the king said, you may do well, and it will be very much for my service, &c. if in your paper you express your dislike of the prince’s design: to which (though he said it twice) neither the archbishop, nor the bishop of London (nor any of the other three, as far as is remembered) returned one word. And so they were dismissed.

On Saturday, Nov. 3d, the bishop of London (who had promised the archbishop the day before to dine this day with him) and the bishop of Rochester (who had been in the mean time sent to, to meet him there) came to Lambeth accordingly. But understanding when they came, that the bishops of Chester and St. David’s (though not invited) were come in before them, and were with the archbishop, they went together to dine with a friend not far off; and returning about 3 or 4 of the clock (those two other bishops being then gone) to the archbishop, they consulted, and agreed, that the archbishop should send to inquire after the bishop of Peterburgh, and that all should meet again there on Monday, and resolve what was fit to be done on this occasion.

The archbishop having found upon inquiry, that (whatever the bishop of St. David’s pretended) the bishop of Peterburgh was not in London; but that he might possibly be heard of at a place in the country not far remote:

On Sunday, Nov. 4th, before day, he horsed a servant, and sent him with a letter to the bishop; who being found, came that evening to the archbishop, and was by him acquainted with the meeting appointed for the day following, at which he promised to be present.

In the mean time (this day before dinner) his majesty sent the lord Preston to the archbishop, to require him to expedite (as much as might be) the return to the king’s proposal. The archbishop acquainted his lordship what

had been done herein hitherto, which, he confessed, was as much as could be done; and said, that he would inform his majesty accordingly.

On Monday, Nov. 5th, the bishops met all at Lambeth according to appointment; and, after due deliberation and debate, agreed unanimously what measures to take, and hold to in their answers upon the whole matter: and what they were, will best appear at their next audience.

This evening the archbishop sent to the lord Preston, to give him notice, that the bishops had this day met, and were ready to wait upon the king the next day between 10 and 11 in the morning, if it were agreeable to his majesty's convenience and good pleasure. The secretary went immediately to the king, and having spoken with him, returned answer, that his majesty accepted of the time, and would then expect them.

On Tuesday, Nov. 6th, when the bishops came together at Whitehall, they found the bishop of St. David's waiting for them in the guard chamber, ready to thrust in with them to the king. But they meeting also (very happily) the lord Preston there, the archbishop took him aside, and desired him to procure for them a private audience from the king. His lordship understood the meaning of the request, and going presently to the king, moved him in it: who thereupon (as the lord Preston informed the bishops) ordered the bishop of St. David's to withdraw; which he did.

When the bishops came into the closet.*

Letter to the Archbishop of Canterbury from the Bishop of Rochester.

May it please your Grace;

When I came out of town on Friday morning, I desired divers of your grace's family to give me notice by a messenger, as soon as your grace should be certain of the time of my lord of London's coming to London. But having heard nothing as yet from Lambeth, I presume his lordship is not yet returned out of Essex. In this time I have drawn up, as your grace commanded, what I can remember of our conference at Whitehall; that if my lord of Peterburgh shall be pressing to go out of town, your grace may be furnished with matter, together with what he shall remember, for the composing an exact account of all that passed. I believe my papers are by much too long; but I thought it was better, in a business of great consequence, to be tedious, than to omit any thing considerable. I shall be ready upon the first summons to attend your grace and my brethren at Lambeth.

I beg your grace's prayers for your grace's, &c.

Nov. 12th, Bromley.

THO. ROFFEN.

* Here concludes the Narrative in the Archbishop's hand writing.

The Bishop of Rochester's relation.

The substance (as I can remember) of what passed between the king, my lord abp. of C. my lord of L. my lord of P. and myself, on Tuesday November 6th, 1688.

We four being sent for into the room within the bed-chamber, whither the king was come before, my lord abp. began to this purpose.

Abp. Sir, we think we have done all that can be expected from us in this business. Since your majesty has declared you are well satisfied in our innocency, we regard not the censures of others.

Here the bishop of Peterburgh and myself having been absent the former meeting, made our personal protestations, (as my lord abp. and my lord of L. had done before us) that we had neither by word nor writing, directly or indirectly, invited the prince of Orange to invade his majesty's dominions, nor did we know of any that had.

K. My lords, I am abundantly satisfied with you all, as to that matter. I had not the least suspicion of you. But where is the paper I desired you to draw up, and bring me?

Bps. Sir, we have brought no paper; nor (with submission) do we think it necessary or proper for us to do it. Since your majesty is pleased to say, you think us guiltless, we despise what all the world besides shall say. Let others distrust as they will, we regard it not: we rely on the testimony of our own consciences, and your majesty's favourable opinion.

K. But I expected a paper from you. I take it, you promised me one. I look upon it to be absolutely necessary for my service; and seeing you are mentioned in the prince of Orange's Declaration, you should satisfy others as well as me.

Here the king, taking notice that my lord of Peterburgh and myself had been absent the time before, took out the Declaration, and read to us what concerned the birth of the prince of Wales, and the prince of Orange's resolutions to come hither for the preservation of our religion and laws, being invited by a great many of the spiritual and temporal lords.

Bps. Sir, we cannot think ourselves bound to declare publicly under our hands against a paper, come forth in such a private manner, which as yet nobody owns; and which, as they say, seems rather to be written like a lawyer's brief, than a princely Declaration. We assure your majesty, scarce one in 500 believes it to be the prince's true declaration.

K. No! said the king with some vehemence, then that five hundred would cut my throat, or bring in the prince of O. upon my throat.

Bps. God forbid.

K. What, must not I be believed? must my credit be called in question? and turning the Declaration over in his hands, one of us asked, whether the prince of Orange's arms were to it? He said, there were all the signs of a true Declaration.

Bps. Sir, your majesty's credit is not here

concerned. It is sufficient for that, that your officers seized on it.

Abp. Sir, it is a good reason to us to suspect it is not his, that this very clause is in it, of his being invited by a great many spiritual and temporal lords. For either this is true, or false. If true, one would think it were very unwisely done of the prince of Orange to discover it so soon. If it be false, one would not imagine a great prince would publish a manifest untruth, and make it the grounds of his enterprize.

K. What! he that can do as he does, think you he will stick at a lie? You all know how usual it is, for men in such cases to affirm any kind of falsehoods for the advantage of their cause.

Bps. However, Sir, this is a business of date, which properly belongs not to us. To declare peace and war is not our duty; but in your majesty's power only. God has intrusted the sword with you.

Abp. Truly, Sir, we have lately some of us here, and others my brethren who are absent, so severely smarted for meddling with matters of state and government, that it may well make us exceeding cautious, how we do so any more. For though we presented your majesty a petition of the most innocent nature, and in the most humble manner imaginable, yet we were so violently prosecuted, as it would have ended in our ruin, if God's goodness had not preserved us: and I assure your majesty, the whole accusation turned upon this one point—Your attorney and solicitor both affirmed, that the honestest paper relating to matters of civil government might be a seditious libel, when presented by persons who had nothing to do with such matters, as they said we had not, but in time of parliament. And indeed, Sir, they pursued us so fiercely upon this occasion, that, for my part, I gave myself for lost.

K. I thank you for that, my lord of Cant. I could not have thought you would believe yourselves lost by falling into my hands.

Bps. Sir, my lord of Canterbury's meaning is, he looked on himself as lost in the courts of law; lost in Westminster-hall.

Abp. But, Sir, the injustice of the prosecution against us did not cease there. After we had been acquitted by our jury, and our acquitment was recorded, and so we were right in the eye of the law, yet after that we were afresh arraigned, and condemned by divers of your judges, as seditious libellers, in their circuits all over England. And, Sir, I beg leave to say, that if the law were open, (that is, as my lord of Cant. afterwards explained himself, if the same persons were not to be judges and parties) had the meanest subject your majesty has, been used as we have been, he would have found abundant reparation in your courts of justice for so great a scandal.

I will particularly acquaint your majesty with what one of your judges, baron H. by name said, coming from the bench, where he had declared our petition to be a factious libel.

A gentleman of quality asking him how he could have the conscience to say so, when the bishops had been legally discharged of it? he answered, you need not trouble yourself with what I said on the bench: I have instructions for what I said, and I had lost my place if I had not said it. Sir, added the *abp.* I hope this is not true. But it is true that he said it. There was another of your judges, Sir, baron R. who attacked us in another manner, and endeavoured to expose us as ridiculous, alledging that we did not write true English, and it was fit we should be corrected by Dr. Busby for false grammar.

Bps. Sir, that was not all. The same judge, as we are certainly informed, presumed to revile the whole church of England with the most scandalous language: affirming, that this church which your majesty has so often honoured by promising to cherish and protect it, is a cruel and bloody church.

K. The king speaking to my lord of Cant. said, my lord, this is querelle d'Alemand: all this is a matter quite out of the way. I thought this had been all forgotten. For my part, I am no lawyer. I am obliged to think what my judges do is according to law. But if you will still complain on that account, I think, I have reason to complain too. I am sure your counsel did not use me civilly. I know what is commonly said, that it is customary for the counsel to speak what they can for their clients. But they went farther, and interposed in matters they had nothing to do with. As for what you say, that it is hazardous to meddle in matters of state, that is true when I do not call you to it. But I may ask counsel or assistance of any, as I now do of you; and then there can be no danger.

Here the king still earnestly urging that we would present him with something under our hands, which he had before sometime called a dislike, sometime an abhorrence, sometime a detestation of the prince of Orange's proceedings; and his majesty insisting much upon a promise of this nature, made by my lords of Cant. and London, when we the other two were absent; they, with all duty and submission, persisted, that they never promised a paper, but only to deliberate with other their brethren about town, whom they could confide in, about framing a paper; and if they should agree upon one, to bring or send it to his majesty. Upon this the king asked my lord Preston, whom his majesty had sent for some time before, whether my lords of Cant. and London had not promised a paper, though they now denied it?

As far as I can recollect, my lord Preston answered in these words, or to this sense—That the said lords bishops promised, that, if they should consent or agree upon a paper, they would present it to his majesty before it was published.

Bps. We then said, we were very few of the bishops' bench in town, with whom we could advise: that in so weighty a business the king might be pleased to summon up the rest,

* See justice Allibon's charge, p. 190.

K. The king answered, he had told my lord of Cant. before, that it would be too far, and too late to send to Carlisle, or Exeter, or other remote parts: but if we there present would subscribe, he would afterwards send to those who were farther off for their concurrence.

Bps. We most humbly intreat, that this small number here present may not be separated from the rest, as if we were most suspected than others: farther we said, that the lords temporal were equally concerned in the accusation; and we prayed, that they might be called together, and joined with us in consulting about this protestation, required of us alone.

K. The king hastily answered, Ay, I believe, some of the temporal lords have been already with you and caused you to change your minds.

Bps. We all solemnly declared the contrary: and the king put this off by saying, that he knew some, as my lord Preston, had been with us.

Bps. We said, we understood, that divers of temporal lords had been with his majesty upon this very occasion; and we humbly asked, whether he had demanded any such thing of them, as he now was pleased to do of us?

K. His majesty said, no, he had not. But it would be of more concernment to his service that we should do it, because we had a greater interest with the people.

Bps. We replied, that in matters of this nature, belonging to civil government and the affairs of war and peace, it was most probable, the nobility would have a far greater influence on the nation than we: they being persons who have a greater stake to venture, and the managing such matters belonging properly to them, not to us.

K. But this is the method I have proposed. I am your king. I am judge what is best for me. I will go my own way. I desire your assistance in it.

Bps. Sir, we have already made our personal vindication here in your majesty's presence: your majesty has condescended to say, you believe and are satisfied with it. Now, Sir, it is in your power to publish what we have here said to all the world in your royal Declaration, which, we hear, is coming forth.

Here also something was added, which I do not distinctly remember. I think, it was to this effect; that this way of men's being so called to purge themselves might be a thing of very tender concernment to the liberties and properties of the subjects, especially of the peers: and therefore we begged his majesty would require no more of us in particular, but would rest content with publishing this our declaration of our innocency.

K. No; if I should publish it, the people would not believe me.

Bps. Sir, the word of a king is sacred: it ought to be believed on its own authority: it would be presumption in us to pretend to strengthen it; and the people cannot but believe your majesty in this matter.

K. They that could believe me guilty of a false son, what will they not believe of me?

Bps. But, Sir, all the court sees us going in and out: and all the town will know the effect of what has been done and said, and we shall own it every where.

K. And all the town will know what I have desired of you; so that it will be a great prejudice to my affairs, if you deny me.

Bps. We still earnestly beseeched his majesty, that we might not be divided from the temporal peers: that at least he would appoint a select number of them to consult with us. The king still refusing to hear of that, and urging our immediate compliance, we told him, that the chief place for us to serve his majesty effectually in was in a parliament: and when he should please to call one to compose all the distractions of his kingdoms, he should there find, that as we had always shewn our personal affections to his majesty, so that the true interest of the church of England was inseparable from the true interest of the crown.

K. My lords, that is a business of more time. What I ask now, I think of present concernment to my affairs. But this is the last time, I will urge you no farther. If you will not assist me as I desire, I must stand upon my own legs, and trust to myself, and my own arms.

The substance and conclusion of our reply was, That as bishops we did assist his Majesty with our prayers; as peers, we intreated we might serve him in conjunction with the rest of the peers, either by his majesty's speedy calling a parliament, or, if that should be thought too long, by assembling together with us as many of the temporal peers as were about the town. This was not hearkened to; and so we were dismissed.

The Bishop of Peterburgh's Relation of what past with the King about Abhorrence, Nov. 6, 1688, [in a Letter to the Bishop of St. Asaph.]

My dear Lord and Brother;

About ten we met, but in the way to the place appointed, my lord archbishop met Watson, who desired to thrust himself in amongst us, but was refused. He went into the bed-chamber, and was sent away from thence by lord Preston, by the king's order, who was made acquainted with our exception. We entered the closet, and the king demanded the paper. We knew nothing of any paper. Rochester and I declared we had no hand directly or indirectly in calling in the prince of Orange. The king said he believed so. The archbishop said we had now done all that we could do: for we had satisfied his majesty, and we were no way concerned for any man's opinion besides, but defied and scorned it. But says the king, you ought to vindicate yourselves. No, Sir, says he, we have been often abused by false reports and libels: after we had suffered a sharp prosecution at the bar, your majesty's

judges reviled us all over the nation, and being secure of our innocence we have made no complaints, nor endeavoured to set ourselves fair in men's opinions. If your majesty be satisfied, as you declare yourself to be, we despise the opinions of others. But, says the king, you promised me a paper of your dislike. It was answered, I promised to call the bishops together, and to consult about it, &c. You promised me a paper, and my lord Preston was witness of it; upon which he was called, who said the same thing, with a condition.

We argued against any farther declaration, because the paper against which we were to declare was not thought to be true; one of 500 did not believe it. We were joined with the temporal lords, and if his majesty expected any declaration from us, it ought to be in conjunction with them. The most proper place was a parliament: but if his majesty's business would not suffer the delay of a parliament, the next best was a convention of the peers. No, says the king; give me leave to understand my own business: it is your declaration which I desire: you are men beloved in your dioceses, and your names and examples will draw others. It was answered, the temporal lords are far more proper for that, whose great estates give them great interest. The archbishop added, that we had lately suffered for meddling, as Williams said, with affairs of state, and there told all the story of our trial, and all this for meddling in public affairs. The king still insisted on a paper, and we on calling a parliament, and in the interim the temporal lords: and so we parted under some displeasure. I am your affectionate brother,

November 7th, —88.

T. P.

It was said that the king might use our names in his Declaration, if he so pleased, which would be equal to our declaration, that we had not called in the prince: but, says he, the people will not believe me. We answered, it was a shame that we should give attestations to his majesty's words, which were sacred, &c. He need not fear we should retract our words, especially when the retraction was treasonable, &c. He told the archbishop and bishop of London, that they had changed their minds; the temporal lords had turned them.*

Bishop of London concerning our † inviting the Prince of Orange, and abhorrence of his designs.

My Lord;

Nov. 6.

Having some necessary business in Essex, which calls me away to-morrow for two or

* The Scots bishops were more compliant than those of England. They published at this time a Declaration, in which they prayed that "Providence might give the king the hearts of his subjects and the necks of his enemies." Dalrymple, part 1, book 5, p. 153, 4to edition.

† The title in the archbishop's hand.

three days, I thought it my duty to give you this account.

When I waited upon the king, by his command, on Thursday morning the 1st of November, he told me, that he had sent for me, when he had nothing but the Declaration of the states of Holland, but that the Declaration of the prince of Orange was now come to his hands; out of which he read to me the short paragraph of the lords temporal and spiritual, inviting his highness over.* Upon which I told him, I was confident the rest of the bishops would as readily answer in the negative as myself: and his majesty was pleased then to say, he did believe us all innocent. Next he told me, he thought it requisite, we should make some public declaration of our innocence in this matter, and likewise an abhorrence. I then desired to see the Declaration: but he refused. I told him this was a matter to be considered. Every one, says he, is to answer for himself: but I will send for my lord of Canterbury, who shall call you together.

On Friday the 2nd of November, I waited upon the king with my lord of Canterbury, &c. when his majesty told him of the prince's Declaration, and made the lord Preston read it. Then he put the question round, which was answered in the negative. Then the king desired some such denial should be published, saying it would be for his service; but would not allow time to send for the bishops at a distance. So his grace told him he would send for those in and about town to consult about it. Upon which the king repeated twice, that we should add our dislike, which would be very much for his service.

I have not time to write the last conference, which I hope my lords of Rochester and Peterborough will compleat.

* Dalrymple has given from (as he says) the original in Sidney's hand, in king William's box, the following article:

"June 30, 1688. We have great satisfaction to find by 35, and since by Mons. Zulestein, that your highness is so ready and willing to give us such assistances as they have related to us. We have great reason to believe, we shall be every day in a worse condition than we are, and less able to defend ourselves, and therefore we do earnestly wish we might be so happy as to find a remedy before it be too late for us to contribute to our own deliverance; but although these be our wishes, yet we will, by no means, put your highness into any expectations which may misguide your own counsels in this matter; so that the best advice we can give, is to inform your highness truly both of the state of things here at this time, and of the difficulties which appear to us. As to the first, the people are so generally dissatisfied with the present conduct of the government, in relation to their religion, liberties and properties (all which have been greatly invaded) and they are in such expectation of their prospects being daily worse, that your highness may be as-

The Bishop of London's REASONS against giving any Paper of Abhorrence.

1. We humbly beseech your majesty to receive what we offer, in a favourable sense, since we have done nothing that can justly deserve misconstruction.

2. We humbly conceive that a general clause in a Declaration, not avowed nor pub-

lished, is not proof, or a sufficient ground for a man, or number of men, to vindicate themselves, as if they were concerned in it. And further, if this Declaration should be owned and published by the prince of Orange, we beg leave to offer it as our opinion to your majesty, that it would be a new thing, and no good precedent to put it [in] the power of a foreign and a general accusation to bring your majesty

sured there are nineteen parts of twenty of the people throughout the kingdom, who are desirous of a change; and who, we believe, would willingly contribute to it, if they had such a protection to countenance their rising, as would secure them from being destroyed, before they could get to be in a posture able to defend themselves; it is no less certain, that much the greatest part of the nobility and gentry are as much dissatisfied, although it be not safe to speak to many of them beforehand; and there is no doubt but that some of the most considerable of them would venture themselves with your highness at your first landing, whose interests would be able to draw great numbers to them, whenever they could protect them and the raising and drawing men together; and if such a strength could be landed as were able to defend itself and them, till they could be got together into some order, we make no question but that strength would quickly be increased to a number double to the army here, although their army should all remain firm to them; whereas we do upon very good grounds believe, that their army then would be very much divided among themselves; many of the officers being to discontented that they continue in their service only for a subsistence, (besides that, some of their minds are known already) and very many of the common soldiers do daily shew such an aversion to the Popish religion, that there is the greatest probability imaginable of great numbers of deserters which would come from them, should there be such an occasion; and amongst the seamen, it is almost certain, there is not one in ten who would do them any service in such a war. Besides all this, we do much doubt whether this present state of things will not yet be much changed to the worse before another year, by a great alteration which will probably be made both in the officers and soldiers of the army, and by such other changes as are not only to be expected from a packed parliament, but what the meeting of any parliament (in our present circumstances) may produce against those who will be looked upon as principal obstructors of their proceedings there; it being taken for granted, that if things cannot then be carried to their wishes in a parliamentary way, other measures will be put in execution by more violent means; and although such proceedings will then heighten the discontents, yet such courses will probably be taken at that time, as will prevent all possible means of relieving ourselves.

“ These considerations make us of opinion,

that this is a season in which we may more probably contribute to our own safeties than hereafter (although we must own to your highness there are some judgments differing from ours in this particular) insomuch that if the circumstances stand so with your highness, that you believe you can get here time enough, in a condition to give assistance this year, sufficient for a relief, under these circumstances which have been now represented, we who subscribe this will not fail to attend your highness upon your landing, and to do all that lies in our power to prepare others to be in as much readiness as such an action is capable of, where there is so much danger in communicating an affair of such a nature, till it be near the time of its being made public. But as we have already told your highness, we must also lay our difficulties before your highness, which are chiefly, that we know not what alarm your preparations for this expedition may give, or what notice it will be necessary for you to give the states before hand, by either of which means their intelligence or suspicions here, may be such, as may cause us to be secured before your landing; and we must presume to inform your highness, that your compliment upon the birth of the child (which not one in a thousand here believes to be the queen's) hath done you some injury; the false imposing of that upon the princess and the nation, being not only an infinite exasperation of people's minds here, but being certainly one of the chief causes upon which the declaration of your entering the kingdom in a hostile manner, must be founded on your part, although many other reasons are to be given on our's. If, upon a due consideration of all these circumstances, your highness shall think fit to adventure upon the attempt, or at least to make such preparations for it as are necessary, (which we wish you may) there must be no more time lost in letting us know your resolution concerning it, and in what time we may depend that all the preparations will be ready, as also whether your highness does believe the preparations can be so managed as not to give them warning here, both to make them increase their force, and to secure those they shall suspect would join with you. We need not say any thing about ammunition, artillery, mortar pieces, spare arms, &c. because if you think fit to put any thing in execution, you will provide enough of these kinds, and will take care to bring some good engineers with you; and we have desired Mr. H. to consult you about all such matters, to whom we have communicated our thoughts in many

jesty's subjects in particular to a vindication of themselves, as if they were regularly accused, and legally tried for a criminal correspondence.

3. If your majesty should think fit to make it punishable to read or communicate this Declaration, then by making such an address as is required, we should do an act, grounded upon a thing which must not be produced; and consequently we shall not be at liberty to alledge the reasons of our doing it, which must unavoidably expose us not only to censure, but suspicion.

4. As we have in all times adhered to our duty and allegiance, we are the less willing to do any thing now which may distinguish us as men marked with a particular character of suspicion; since we think our loyalty less blemished by not being called in question, than it would be by the clearest vindication that can be made of it upon this occasion.

5. We beg leave to observe to your majesty, that by an address from these few of us who are now in town, without the concurrence of the greater number, who are absent, it would look to the world as if the bishops (who, we hope, are very well united) were of differing opinions: or, that we, who are now here, had more particular need of a vindication than the rest; which maketh it reasonable for us to be unwilling to come within the danger of an interpretation.

6. We consider, that the clause in the Declaration joineth the lords spiritual and temporal; so that, if it has any meaning, it must intend that there is a concurrence of many of both orders to invite them to this attempt; which would make it more improper for us, even though all the bishops were here, to make a separate vindication, where the accusation is joined and comprehends the temporal lords in it; so that if any notice is to be taken of it, it can be done no where so naturally, or with so good effect, as in parliament, which, whenever your majesty shall think fit to call, we resolve to do our duty, and to employ our utmost endeavours for the good of the church and state, and for the preventing the miseries

particulars too tedious to have been written, and about which no certain resolutions can be taken, till we have heard again from your highness.

25	24	27
Shrewsbury.	Devonshire.	Danby.
29	31	35
Lumley.	London.	Russel.
		Sydney."

He thus decyphers the figures, upon the authority, as he alledges, of a key in the handwriting of Mr. Sidney, enclosed in one of his letters to the prince of Orange.

To how very little credit Dalrymple is intitled, is set forth in a work published in 1797, under the title of "Biographical, Literary, and Political Anecdotes of the most distinguished Persons of the late and present times."

which now seem to threaten these distracted kingdoms, and to acquit ourselves in all things, which shall be there transacted, as becomes, &c.

Vote of Thanks from the House of Commons to the Clergy of the Church of England; with an answer from the two Archbishops.

Veneris 1mo die Febr. 1688.

Resolved *nemine contradicente*. That the thanks of this House be given to the clergy of the Church of England, who have preached and written against popery, and refused to read (in their churches) the king's Declaration for toleration, in opposition to the pretended dispensing power claimed in the late reign of king James the 2d: and have opposed the illegal ecclesiastical commission.

Ordered,

That Mr. Leveson Gower and Mr. auditor Done do attend the two archbishops with the said resolve, to the end their graces may communicate the same to the clergy in their respective provinces.

PAUL JODRELL, C. D. C.

The sum of our answer,* twice, or thrice repeated.

That what the clergy of the Church of England had done in opposition to popery, and the pretended dispensing power, was done out of the sense of the duty we owe to God and our country: for we are true Englishmen, and true Protestants, and heartily love our religion and our laws; and esteem the very doing our duty herein to be in itself a reward, and a great satisfaction, without looking farther. Notwithstanding finding, that in what we have done, we have the general approbation of the nation, and so public a testimony of it as a vote of this honourable House, we bless God for so great an encouragement; and we in the name of the rest return our humble thanks to the House, and will take care to communicate what they have voted to the clergy in our respective provinces.

Mr. Speaker;

We do not think it sufficient that we have signified our grateful sense of the favourable vote of your honourable House, sent to us yesterday by two worthy members thereof, unless we do also repeat the same to you under our hands: and withal give you assurance (as we do hereby) that, so far as our observation can reach, the bishops and clergy of England are unmoveably fixed to the Protestant religion, and absolutely irreconcilable both to popery and arbitrary power. And so beseeching Almighty God, to direct all your councils and resolutions to his own glory, and to the good and welfare both of church and state; we humbly take leave, and subscribe ourselves your very affectionate faithful servants,

Febr. 2, 1688.

W. CANT.

THO. EBOR.

* The whole in archbishop Sancroft's hand.

Mr. Speaker ;

We do not think it sufficient, that we have signified our grateful sense of the favourable vote of your honourable House, sent to us yesterday by two worthy members of the same ; unless we do also repeat the same to you under our hands : and withal give you assurance (as we do hereby) that so far as our observation can reach, the bishops and clergy of England are unmoveably fixed to the Protestant religion, and absolutely irreconcilable both to popery, and to arbitrary power. And we humbly recommend to this honourable House the care of preventing, and suppressing in the most effectual manner, all popish doctrines and practices ; that henceforth they may find no admittance or encouragement among you, or us, or the people of this nation : in which desire we are secure of the full and hearty concurrence both of the bishops and the whole body of the clergy of this church. And so beseeching Almighty God, to direct all your counsels and resolutions to his own glory, and to the good, and welfare both of church and state ; we humbly take leave, and subscribe ourselves your affectionate friends, and faithful servants,
Lambeth House, Feb. 2, 1688. W. CANT.

THO. EBOR.

*The Earl of Rochester's PAPER.**

The king told me this morning, that he had spoken to your grace, first by yourself, and a second time with some other of the bishops, about that part of the prince of Orange's Declaration, that says, he had been invited to come into England by the lords spiritual and temporal, in relation to your making some declaration under your hands of dislike of it : that he found your grace both times very backward and slow in it, and complained very much that you were so : that it was two or three days since the last time he spoke to you, and that yet he heard not from you : that he would send again to you, for that it imported him very much to have something from you, on this occasion : he added, that your grace had said to him, if his majesty expected any thing in writing by way of dislike, that you wished he would summon all the bishops ; but his majesty added, that that would be a work of time, and that it was necessary for him to have something speedily. This is, as near as I can repeat it, the effect of what the king said to me, which I thought it fit to acquaint your grace with.

I acquainted the king that I had been yesterday at Lambeth ; that I had dined with your grace ; that after dinner came in the two bishops that were there ; that there was some discourse amongst us, of this matter, and that all that I found it came to was, that your grace had a mind to have the opinion of as many of the bishops as were near, and that being informed the bishop of Peterborough was so, you had resolved to get him to you.

* This title in archbishop Sancroft's hand.

Archbishop Sancroft's Declaration that he did not invite the Prince of Orange into England : Dated 3d of Nov. 1688.

Whereas there hath been of late a general apprehension, that his highness the prince of Orange hath an intention to invade this kingdom in hostile manner ; and (as it is said) makes this one reason of his attempt, that he hath been thereunto invited by several English lords both spiritual and temporal : I William archbishop of Canterbury do for my own discharge profess and declare, that I never gave him any such invitation by word, or writing, or otherwise ; nor do I know, nor can believe, that any of my reverend brethren, the bishops, have in any such wise invited him. And all this I aver upon my word, and in [confirmation] thereof have subscribed my name here at Lambeth this 3d day of Nov. 1688. W. C.

Letter to Archbishop Sancroft from sir Thomas Powys, knt. Attorney General ; relating to the Order of Council for prosecuting the Seven Bishops.

May it please your Grace ;

I have sent my servant to attend your grace for the order of council, I left last night ; which is not to be taken away, unless your grace have no farther occasion for it : I know your grace will easily pardon me for being solicitous to have it printed ; for I was desirous to lay hold of any thing which might, if not to the world, excuse, yet something perhaps alleviate my acting in that most unhappy prosecution, which (I call God to witness) was the most uneasy thing to me, that ever in my life time I was concerned in : and if I may be so happy as by any future action of my life to testify my sorrow, and my earnest desire, if it were possible, to make reparation, I will surely perform it with the greatest chearfulness : my lord, I hope, notwithstanding what is passed, your grace will be pleased to have that charity for me, as to believe me to be, what I really am, my lord, your grace's obedient servant, &c.
— Jan. 1688. THOMAS POWYS.

Account of the EXPENCES sustained by the seven Bishops on their Prosecution, Trial, &c. with the Valuation and Tax on their several Incomes, for the purpose of defraying the said EXPENCES.

	The Valuation.	The Tax.
	£.	£.
To be paid by Cant. for	4000	per ann. at 6l. per cent. 240
— St. Asaph for	700	42
— Elie for	2,000	120
— Chich. for	770	46*
— Ba. & W. for	850	51
— Peterb. for	630	38†
— Bristol for	350	21
	9,300	at 6 per C. 558

* Less than the tax 3s. 6d.

† More than the tax 3s. 6d.

	£.	s.	d.
Paid by Cant. for 2 expresses (to Cant. and Norw.) - - - -	2	6	11
— to Mr. Lancaster, May 28th, in silver - - - -	20	0	0
— to the same 20 Gg. - - -	21	10	0
— to Mr. Ince at Lambeth, Jun. 21st, 40 Gg. - - - -	43	0	0
— to Mr. Ince at Lambeth, Jun. 28th, 110 Gg.* - - -	118	5	0
— to Mr. Ince at Mr. Whin- yard's, Jun. 30th, 52 Gg. - -	55	18	0
	260	19	11

Paid by St. Asaph to Mr. L. Jun. 28th, 15 Gg. - - - -	16	2	6
— more to Mr. L. 20 Gg. - -	21	10	0
— to the Abp. at his going away. - - - -	12	7	6
	50	0	0

Paid by Elie to Mr. Lanc. 30 Gg. May 28th. - - - -	32	5	0
— to the same 20 Gg. Jun. 20th. - - - -	21	10	0
— to the Abp. July 10th. - -	46	5	0
— to the Abp. Sept. 17th. (by Mr. Spencer.) - - - -	20	0	0
	120	0	0

Paid by Chichr. to Mr. Hanses, 2 Gg. - - - -	2	3	0
— to Mr. Lanc. Jun. 21st. - -	4	19	6
— to Mr. Ince, Jun. 20th. - -	9	0	0
— to the Abp. 35 Gg. - - -	37	12	6
	53	15	0

Paid by Bath and Wells to Mr. Lancaster. - - - -	20	0	0
--	----	---	---

Paid by Peterburgh to Mr. Hanses. - -	4	6	0
More to Mr. Hanses, 20 Gg. - -	21	10	0
	25	16	0

Paid by Bristol to Mr. Lanc. 15 Gg. - -	16	2	6
— more to the same, 20 Gg. - -	21	10	0
	37	12	6

Given freely by the Bp. of Nor- wich, paid to Mr. Lancaster. - -	5	0	0
--	---	---	---

So that there is paid in more than the Tax;			
by the Abp. - - - -	20	9	11
repaid. by St. Asaph. - - -	8	0	0
repaid. by Chichr. - - - -	7	15	0
by Bristol. - - - -	16	12	6
Less than the Tax;			
by Bath & Wells. - - -	31	0	0
by Peterburgh. - - - -	12	4	0

* To retain.

RECEIPTS.	£.	s.	d.
The Tax upon the Valuation, and the particular payments in the page foregoing being adjusted and set right, the total receipt upon the Tax is - - - -	558	0	0
The Bishop of Norwich his free gift is - - - -	5	0	0
	563	0	0

EXPENSES.	£.	s.	d.
1. By Mr. Lancaster, as in Bill A. -	57	7	9
2. By Mr. Hanses, as in Bill B. -	49	10	0
3. By Mr. Ince, as in Bill C. -	388	12	0
4. By the Archbishop:			
To Major Hawley, gent. Porter at the Tower, 20 Gg. - - - -	21	10	0
To Mr. Blaney for taking the Trial in short hand, and for a fair Copy of the same, in full (be- side 5 Gg. given him in hand by Mr. Ince) 35 Gg. - - -	37	12	6
For 2 Expresses, one to Cant. with Papers—another toward Norwich to Waltham Cross - -	2	6	11
	556	19	2

Balance. So that there is re- maining in the Accountant's hands - - - -	6	0	10
---	---	---	----

The 4 forementioned ACCOUNTS OF THE EXPENSES reduced into one, under distinct heads; (that they may be the better judged of) in which A. is Archbishop; L. Lancaster; H. Hanses; I. Ince.

1. FEES TO THE COUNSEL.

For the retaining 3 of the coun- sel, sc. - - - -	6	9	0
To Sir F. P. Sir R. S. Mr. P. Mr. F. to each 5 Gg. twice. H. June 11. To Mr. Pollexfen for advice. I. - - - -	43	0	0
12. To Sir Fr. Pemberton. I. - -	3	4	6
14. To Sir Rob. Sawyer. I. - -	3	4	6
21. To Sir F. P. Sir R. S. and Mr. Pol. to each 10 Gg. for ad- vice past and future (they hav- ing not been duly paid.) I. - -	32	5	0
22. To Sir Geo. Treby for a re- taining Fee. I. - - - -	5	7	6
23. To him more upon a consult with the rest. I. - - - -	5	7	6
To Sir Creswell Levinz a retain- ing Fee. I. - - - -	5	7	6
25. To him more upon a consult with the rest. I. - - - -	5	7	6
— To Mr. Sommers a retaining Fee. I. - - - -	5	7	6
27. To him more at a meeting of the counsel, I. - - - -	5	7	6

28. To Sir F. P. Sir Cr. L. Sir G. Tr. Mr. Pol. and Mr. Sommers, to each of them 20 Gg. (Mr. F. and Sir R. S. refusing.) I. - -	107	10	0
July 3. To Mr. S. to consult of moving to discharge the Recognisance. I. - - - -	2	3	0
To Sir Cresw. Levinz for the same. I. - - - -	3	4	6
4. To Mr. Radford to move for it the last day of the Term. I. -	2	3	0
To Mr. Pollexfen to second the Motion. I. - - - -	3	4	6
	240	16	0

2. TO ATTORNEYS AND SOLICITORS.

To Mr. Grange. H. - - - -	2	3	0
June 13. To him to prepare the 2 Pleas against the first day of the Term. I. - - - -	1	1	6
15. For drawing the Rule for a Trial at Bar. I. - - - -	0	10	0
17. For writing 13 Copies of the Information. I. - - - -	1	16	0
28. For drawing the Rule for the Clerks of both Houses of Parl. to attend with the Records. I. -	0	7	6
	5	18	0

3. FEES TO OFFICERS.

June 11. To Mr. Brown to observe the Proceedings in the Crown Office. I. - - - -	1	1	6
17. To his Man for care and expedition. I. - - - -	0	10	0
28. To Mr. Brown upon his Bill. I. More to the same in full. I. - -	10	15	0
15. To Cook for Chairs for the Bishops in Court. I. - - - -	1	0	0
To the Deputy Marshal for Fees and Attendance. I. - - - -	2	3	0
To the 4 Tipstaves for 7 Recognisances and their pains. I. - -	2	4	0
To the Criers for their Fees and pains. I. - - - -	2	0	0
To the Door-keepers. I. - - - -	1	0	0
To the Court-keeper. I. - - - -	0	5	0
25. To Sir Sam. Astry for striking the Jury. I. - - - -	2	3	0
To the Under Sheriff for attending with his book. I. - - - -	2	3	0
July 2. To Sir Sam. Astry for his Fee upon the Trial. I. - - - -	2	3	0
To Mr. Harcourt his Secondary. I. -	2	3	0
To the Clerk of the Rules. I. - -	1	1	6
3. To the Deputy Marshall. I. - -	3	4	6
To the Criers Fees and Gratuities. I. - - - -	5	18	0
To the Court-keeper 10s. to the Hall-keeper 10s. to the Door-keepers 2l. I. - - - -	3	0	0
To the Marshalls 12 Under-Waiters to clear the Court. I. - - - -	3	10	0

4. To the 4 Tipstaves for attending the Court, and watching the Jury. I. - - - -	9	13	6
And to Prescott one of their servants. To Cook for Chairs on Friday and Saturday. I. - - - -	0	5	0
5. To the Clerk of the Treasury. I. To the Book-bearers. I. - - - -	1	1	6
6. To the Sheriff's Bailiffs, that summoned the Jury. I. - - - -	0	15	0
	3	12	6
	78	10	0

4. FOR SEARCHING AND COPYING RECORDS.

For transcribing Papers and Journals for Mr. Hanes. H. - - -	0	15	0
June 23. To Mr. Walker, Deputy Clerk of the Lords House, for search and Copies. I. - - - -	9	5	6
To his Man sitting up all night to copy and examine. I. - - - -	0	10	0
To Mr. Jodrel, Clerk of the H. of Commons, for search and copies. I. - - - -	4	0	0
To his Man for dispatch 10s.—and June 25th 7s. 6d. more. I. - -	0	17	6
July 9. To Mr. Walker for attending at the Trial with the Records. I. - - - -	5	7	6
To Mr. Jodrel for attending at the Trial with the Records. I. - -	5	7	6
To Mr. Miller at the Acorn, for printed Votes and Speeches. I. -	0	5	0
July 10. To Mr. Fr. Mills, for Copies of Records for Mr. Hanes, and for writing Breviats for the Trial (v. Bill) I. - - - -	9	6	6
To Mr. Petit for searching Records for Mr. Hanes. I. - - -	10	15	0
And to Mr. Washington for his help therein. I. - - - -	3	4	6
July 17. To Mr. Halsted for search, and Copies of Records at the Tower. I. - - - -	15	5	6
	64	19	6

5. GRATUITIES.

June 22. To the Clerk of the Tower-Church. I. - - - -	2	0	0
June 23. To the Tower-Warders (disposed by D. Hawkins.) I. -	4	0	0
To Mr. Reinolds the Lieutenant's Clerk. I. - - - -	3	0	0
July 24. To Major Hawley, Gent. Porter of the Tower. I. - - -	21	10	0
July 18. To Sir Fr. Pemb.'s Clerk (the meetings being at his Chamber.) I. - - - -	1	0	0
To Mr. Finch's Clerk (who's Mr. refused fees.) I. - - - -	1	0	0
To Sir R. S. Sir Cr. L. and Mr. Pol.'s Clerks (10s. a piece). I. -	1	10	0
To Sir Geo. Tr. and Mr. Sommers' Clerks (5s. a piece.) I. - - -	0	10	0

	£.	s.	d.
July 6. To Hutchinson, Mr. Rouse's Clerk. I. - - - -	0	5	0
July 7. To Mr. Grange's Clerks, for care, pains, and examining. I. - - - -	2	3	0
July 20. To Mr. Ince's 3 Clerks, for great pains, sitting up all night, (particularly with the Jury) examining Records in Tower, and Parlt. I. - - - -	3	4	6
June 27. Given at Ld. Middleton's when we petitioned for the Parlt. Records. I. - - - -	0	15	0
Given at the Ld. Chancellor's upon same occasion. I. - - - -	0	7	6
June 16. To Mr. Bownd to watch in the Sheriff's Office. I. - - - -	1	1	6
July 6. To Mr. Helms for attending the Jury all night, and other helps. I. - - - -	1	0	0
	43	6	6

6. OTHER OCCASIONAL EXPENCES.

To Mr. G. for printing, &c. L. - - - -	23	0	0
To the Abp. for two Expresses; sc. to Cant. and toward Norwich. A. - - - -	2	6	11
To the Bp. of St. As. for Expresses into Wales. L. - - - -	9	3	9
— And for a Messenger that brought a Letter. L. - - - -	0	2	6
To the Bp. of Elie for an Express into the North. L. - - - -	11	12	0
— for an Express to Camb. and Elie. L. - - - -	0	16	0
— And for three Expresses to Farnham. L. - - - -	2	5	0
To the Bp. of Chich. for what he paid for Fees, &c. H. - - - -	0	15	0
To the Bp. of B. and W. for Expresses to Oxford and Exeter. L. - - - -	3	4	6
— And for a 2d Express from Wells to Exeter. L. - - - -	0	15	0
June 12. Spent at a Coffee-house in attending the Bp. of Norwich. I. - - - -	0	0	2
To Mr. Hanses for Coach-hire, &c. H. - - - -	0	19	6
More to him for Coach-hire, Waterage to the Tower, &c. H. - - - -	1	17	6
June 30. To the Mr. of the Sun-Tavern for a Supper on the day of Trial for the Parlt. Clerks and Witnesses. I. - - - -	1	12	8
July 2. To the Mr. of the Bell-Tavern where the Jury were kept. - - - -	5	2	6
July 5. For Bread, Beer and Wine, brought into the Court. I. - - - -	1	18	6
To Mr. Ince for Coach-hire, Waterage, Porterage, and other petty Expences from June 11th to July 18th. I. - - - -	14	17	8
To Mr. Blaney for taking the Trial in short hand, and for a fair Copy of the same. I. & A. - - - -	43	0	0
	123	9	2

	£.	s.	d.
1. Fees to the Counsel - - - -	240	16	0
2. To Attorneys and Solicitors - - - -	5	18	0
3. To Officers - - - -	78	10	0
4. For searching and copying Records - - - -	64	19	6
5. Gratuities. - - - -	48	6	6
6. Other occasional Expences - - - -	123	9	2
	556	19	2

THE SECOND ACCOUNT.—EXPENCES.

Oct. 9. To an Express that went in the Night to Copt-Hall to the Bp. of London - - - -	0	10	0
Oct. 11. To Mr. Ince, for his great care and pains, 40 Gg. - - - -	43	0	0
Oct. 12. To Mr. Scott, for copying the Sheriff's book, and his assistance in striking the Jury, 3 Gg. - - - -	3	4	6
To Mr. Grange, for his assistance, 10 Gg. - - - -	10	15	0
	57	9	6

RECEIPTS.

Due from me upon the Balance of the first account - - - -	6	0	10
Receiv'd since of the Bishop of Bath and Wells as an additional Tax for 50 <i>l.</i> per ann. on the former account; he having found the Rents of his Bishopric to be 900 <i>l.</i> per annum - - - -	3	0	0
A second Tax upon the former Valuation of 9,300 <i>l.</i> at 10 <i>s.</i> 5 <i>d.</i> per cent. amounts to - - - -	48	8	9
	57	8	7
Balance.—So that this Tax being paid (according to the particular following) there will remain in my hand - - - -	0	0	1
The particular Tax upon the Bishops to raise - - - -	48	8	9
The Abp. for 4,000 <i>l.</i> - - - -	20	16	8
The Bp. of St. Asaph for 700 <i>l.</i> - - - -	3	12	11
The Bp. of Elie for 2,000 <i>l.</i> - - - -	10	8	4
The Bp. of Chich. for 770 <i>l.</i> - - - -	4	0	2½
The Bp. of Bath and Wells for 850 <i>l.</i> - - - -	4	8	6½
The Bp. of Peterb. for 630 <i>l.</i> - - - -	3	5	7½
The Bp. of Bristol for 350 <i>l.</i> - - - -	1	16	5½
	48	8	9

N. B. That whereas in the 1st Tax Chich. paid 3*s.* 6*d.* less, and Peterb. 3*s.* 6*d.* more than the just Tax; now to set that right, Chich. must in this 2d pay 3*s.* 6*d.* more; in all - - - - 4 3 8½
And Peterburgh 3*s.* 6*d.* less; and so but - - - - 3 2 1½

£. s. d.

Note also, that there is left in the hands of the Bishop of B. and W. for his additional 50*l.* upon the 2d Tax - - - - - 0 5 2½

November 22, 1688.

I have examined these two accounts, and find them justly summed.

THO. PETRIBURG.

We have seen (p. 108, of this Volume,) that in 1686, king James granted to Obadiah Walker a license to print and sell several Popish books. Two years afterwards the sale in Scotland, of certain books and pamphlets, was prohibited by the following Proclamation:

‘ James by the grace of God, king of Great Britain, France and Ireland, defender of the faith: To
 ‘ Macers of our privy council, messengers at arms, our sheriffs in that part, conjunctly and severally, specially constitute, greeting:
 ‘ Forasmuch as we being informed, that there are many impious and scandalous books and pamphlets printed in Holland, and elsewhere, inciting our subjects to murder and assassination, as well as rebellion, to the great reproach of the christian religion, and the ruin of all human society; in which also our government and the actions of our royal predecessors, and our own, are represented as cruel, barbarous and tyrannical, and all such as have served and obeyed us, are railed at as enemies to God and their native country, notwithstanding of the great care we have always taken to tolerate all different persuasions, and the clemency we have shewn in pardoning the greatest criminals, which books are brought home into this kingdom, and vended, and spread here; and we being most desirous, on this, as on all other occasions, to prevent any of our subjects being brought into a snare, we have thought fit hereby to intimate and make known, that if any of our subjects shall hereafter bring home, vend, or sell, disperse or lend any of the books underwritten, viz. all translations of Buchanan de Jure Regni, Lex Rex, Jus Populi, Nephtali, the Cup of Cold Water, the Scots Mist, the Apologetical Relation, Mene Tekel, the Hynd let loose, the treasonable Proclamations issued out at Sanquhar, and these issued out by the late duke of Monmouth, and the late earl of Argyle, or any other books that are, or shall be hereafter written or printed, defending these treasonable and seditious principles, they shall be liable as if they were authors of the said books; and all other our subjects are hereby commanded to bring in any of the said books they have, and deliver them into any privy councillor, sheriff, balie of regality, or bailaries, or their deputes, or any magistrates of burghs, to be transmitted by them to the clerks of our privy council, to the end the

‘ same may be destroyed: with certification that whoever (except privy councillors) shall be found to have any of the said books, and not to have delivered them up, shall be fined, for our use, in such a penalty as our council shall appoint, for each of the said books, that he or they have not delivered up; and appoints the said books and pamphlets to be brought in betwixt and the diets following, viz. These in the town of Edinburgh, and suburbs thereof, betwixt and the first Tuesday of September next to come, and all others within this kingdom, betwixt and the first Tuesday of November next to come. And to the end our royal pleasure in the premisses may be made public and known, our will is, and we charge you strictly and command, that incontinent, these our letters seen, ye pass to the market-cross of Edinburgh, and whole remanent market-crosses of the head burghs of the shires of this kingdom, and other places needful, and there, in our name and authority, make publication of our royal pleasure in the premisses. And recommend to the most reverend the archbishops, and right reverend bishops, to cause read this our royal Proclamation, in all the pulpits of this kingdom, upon some convenient Lord’s day, in the forenoon, immediately after divine service, that none pretend ignorance.

‘ Given under our signet, at Edinburgh, the 15th day of August, 1688 years, and of our reign the fourth year.

‘ *Per actum Dominorum secreti Concilii.*

‘ WM. PARTERSON, Cl. Sec. Con.’
 ‘ God save the king.’

Of this Proclamation, Wodrow writes:

“ The occasion of it was the seizing of some copies of the Hind let loose, when coming home from Holland. We have had several Proclamations of this sort before, and so I shall not spend time in observes upon this; and indeed it is softer than one would have expected, after their seizing of such a book as the last named, wherein the king’s right and title is impugned and argued against.

“ It is not without a particular emphasis, that the Proclamation declares the books prohibited to have been printed in Holland; now when the noise of the prince of Orange’s expedition began to be talked of. The books and pamphlets discharged, are, ‘ All translations of Buchanan de Jure Regni, Lex Rex, Jus Populi, Nephtali, the Cup of Cold Water, the Scots Mist, the Apologetical Declaration, Mene Tekel, the Hind let loose, the treasonable Proclamations issued out at Sanquhar, and those issued out by the late duke of Monmouth, and the late earl of Argyle.’ The terms upon which they are to be brought in, and other things, the reader hath in the proclamation itself.

“ I am well informed that this Proclamation was put in execution in Edinburgh, by people who in the councils name went through the booksellers shops, and seized not only these

where they found them, but likewise any books written against Popery, alledging the selling of these tended to alienate peoples minds from his majesty. And I have the following pleasant incident from a very good hand at this time in Edinburgh.

"Some of the counsellors gave themselves the trouble to visit some of the booksellers' shops, and the advocate used to relax himself this way. Either he, or another of the counsellors came into a shop, where the master was a firm whigg, and asked him if he had any prohibited books. The other desired him to search and look for them. After he had looked through and caught nothing, he asked if he had any books against Popery. The other answered he had, and a good number of them. The former called for a sight of them; for, said he, that is the religion of his majesty, and his subjects ought not to be alienated from him upon that score. Upon this the counsellor was directed to the place in the shop where the bibles lay, and the door being cast open he took one of them, and a second, and said to the bookseller, these are bibles. They are so, said the other, and from one end to the other against Popery. This was reckoned an high crime;

and in the afternoon the master of the shop was cited to appear before the council, and there was brought to some trouble."

Among sir William Williams's papers are his original brief in this cause, and the order (under the councils' seal) directing the attorney and solicitor general to prepare the information against the bishops, and prosecute the same, &c. By this latter instrument, it appears, that the persons present in council when the order was made, were, the king, lord chancellor, lord president, lord privy seal, marquis of Powis, lord chamberlain, earl of Huntingdon, earl of Peterborough, earl of Craven, earl of Berkeley, earl of Moray, earl of Middleton, earl of Melfort, viscount Preston, lord Dartmouth, lord Godolphin, lord Dover, Mr. chancellor of the exchequer, lord chief justice Herbert, sir Nicholas Butler, Mr. Petre.

Sir W. Williams, in his Argument in Prynne's Case, Trin. 2, W. and M. speaking of this case of the seven bishops, said, "I will not undertake to justify the proceedings of the late government: we have all done amiss, and must wink at one another." See 5 Mod. 463.

359. Trial of JOHN LOVE the younger, and others, for Rebellion, Treason, and Lese Majestie: 3 JAMES II. (of England) A. D. 1687. [Now first published from the Records of Justiciary at Edinburgh.]

CURIA JUSTICIARIA, S. D. N. Regis tenta in Prætorio Burgi de Edinburgh, quarto die mensis Maij, milesimo sexcentesimo octagesimo septimo, per nobilem et potentem Comitem Georgium Comitem de Linlithgow Justiciarum Generalem, et honorabiles viros dominos Jacobum Foulis de Collingtone, Justiciarium Clericum, Joannem Lockhart de Castlehill, Rogerum Hoge de Harcarss, Patricium Lyone de Carss, Commissionarios Justiciariæ dictij S. D. N. Regis.

Curia legitime affirmata.

Intran.

John Love, younger, in Little Govan.

John King, elder, in Meikle Govan.

John King, younger, ther.

Alexander Clerk, ther.

William Cadwell, ther.

Umphray Barbour, in Bisk.

John Cadwell, ther.

William Orr, ther.

John Pattison, elder, in Lochsyde.

James Wilson, in Mosshead.

John Cadwell, in Hall of Beltrees.

John Orr, in Beltrees.

Thomas Cadwell, ther.

William Cadwell, in Glendarloch.

Andrew Robiesone, in Trees.

Robert Orre, in Beltreemuir.

William Cadwell, in Brunthill.

David Smith, in Glenhead.

Robert King, ther.

Robert Orre, in Beltrees.

James Robiesone, in Wardzett.

THE deceast John Love, elder, in Little Govan, his — relict children and nearest of kine, citted to appear to hear and see the proces of forfaulture orderlie led: That wher, notwithstanding be the common lawe, lawes and acts of this kingdome, and constant practice theroff, particularlie be the third act of the first parliament, and threttie seventh act off the second parliament of king James the first, and fourteenth act of the sixt parliament and fourteenth act of the twelt parliament of king James the second, and nyntie seventh act of the seventh parliament of king James the fyfth, and the hundreth fourtie fourth act of the twelt parliament of king James the sext, and fyfth act of the first session of the first parliament of king Charles the second; the ryseing of his majestie's subjects, or any number off them, the joyeing and assembleing together in armes without, or contrair to his majestie's command, warrand, or authoritie, and the abaitting, as—

sisting, receping, intercomoneing or keeping, correspondence with such rebels, suplieing them with money, armes, help, red or counsell, or the instigating, perswadeing, or outhounding any persons to goe to rebellione, or giving them meat, drink, or any releiff or confort, or the not searching for or apprehending of them, or not expelling them furth off the countrey or giving tymeous intelligence of them to that effect, ar most detestable, horrid, hynous and abominable crymes of rebellione, treasons, and lese majestie, and are punishable by forfaiture of lyfe, lands and goods, be the eleventh act of the first session of the second parliament of king Charles the second, forfaitures ar apoynted to proceed in absence. Neverthelesse it is of veritie, that the said John Balfour of Kinloch, and David Haxstoun off Rathillet, and others, having upon the third day of May, 1679 years, killed and murdered his grace James late archbishops of St. Andrews: they, to escape justice, did involve others in ther guilt, fled into the Westerne shyres, and rose and joynd in open armes and rebellione against his majestie and his authoritie, with seven or eight thousand rebels, ther accomplices from all places of the West and South countreyes, did burne his majestie's lawes and acts of parliament, at the Mercat Croce of Rutherglen, issued furth treasonable proclamations and declarationes of ther owne, drowned out bonfyres, sett on in commemoratione of our royall brotherther gracioussoveraine his happie restoratione, and upon the — day of June the said year, did fight, resist and oppose a pairti of our forces at Loudonhill, under the command of captaine Grahame, of Claverhouse, killed and murdered severalls of them, and them marched in warlyke postoure to our burgh off Glasgowe, did assault and atacke the same, and his majestie's forces therin, wher being repulsed, they marched up and downe the countrey in military forme, randevouzed and exercised themselves, apoynted officers and commanders over them, did robb and rifle the goods, horses and arms of his majestie's good subjects, did take prisoners kept, counsellis of warr, incamped themselves at severall places, particularlie at Solcross, and commissar Fleymeing's park, at the Shawehead muire and Bothwell-bridge; and whill the saids rebels were thus up in armes committeing all acts of hostilitie and high treasons, the saids John Love, John King, elder, and younger, and the haill remanent persons above named, with fyve or six score off rebels, ther accomplices, did lykwayes ryse and apear in armes in open rebellione against his majesty and his authority within the shirreffdome of Renfrew, and places adjacent therto, randevouzed and drilled up and downe and exercised themselves, apoynted captaines and commanders over themselves, wherof James Niving, in muirhead of Beltrees, and — wer principalls; and being armed with swords, pistolls, guns, pykes, Lochaber axes, trees and cabers, they marched up and downe and rank and fyle, and in war-

lyke and military postoure, particularlie kept a publict randevouze at Midletounhill within the shyre of Renfrew the week befor the defate at Bothwell-bridge, at which randevouze they disciplined and exercised themselves as souldiers and trained men use to doe, and ther they held a counsell of warre, and consulted and advysed, and positivlie resolved, determined and trysted to march forward and joyne with the bodie of the rebels, who wer encamped at Bothwell-bridge, upon the Mununday thereafter, before which tyme the saids rebels were defate, and wher lykwayes they did instigaite, perswade and encourage one ane other, and severall others persons, and particularlie Henry Dyks, and —, to ryse and joyne in the said rebellione, and promised them money and armes, and wher also they did contribute and collect amongst themselves three hundreth merks as a present supplie to be sent to the saids rebels at Bothwell-bridge till they should come up themselves, and ever since the said rebellione the persons complained upon have harboured, recept and conversed, intercommoned with, and supplid in ther housse and upon ther ground and lands, common and notorious rebels and traitors, who were fourfaulted or declaired fugitives or declaired rebels for the said rebellione, or whom they sawe or knew to be in the said rebellione, and particularlie James Niving, in Beltrees, and — Love, in Cadwell, upon the first, second, third, ore ane or other of the dayes of — years. Wherthroue the doing or comitting wherof, or ane or other of the saids treasonable crymes, the said John Love, John King, elder and younger, and the remanent persons above complained upon, have committed the crymes and incurred the paines of high treasons, rebellione and lese majestie, and ar actors, airt, and pairt, of the samen: which being found be ane assyse, they ought to be punished with forfaiture of lyfe, land and goods, to the terror and example of others to comit the lyke in tyme commeing.

Persewer.—Sir John Dalrymple, his majesty's Advocate.

Sir Patrick Hume, sir Robert Colt, Advocats.

Procurators in Defence.—Sir George Mr. Kenzie, sir David Thiores, Mr. Daniel Lockhart.

His majesty's Advocate restricts his lybell to that pairt thereof concerning the randevouze at Mideltounhill, and what was done ther, and to the conversing with James Niving *allienarlie* in manner lybelled. The Persewer produced ane act of privie counsell for insisteing against the forenamed persons and others, wheroff the tenor followes:

Edinburgh the 10th day of March, 1687. The lords of his majesty's privie counsell haveing heard and considered the report of a commissione granted be them to the sheriff depute of Renfrew, and others, for taking tryall and precognitione of wittness against

the persons following (for ther alleadged accessione to the rebellione at Bothwell-bridge, and other crymes) they are to say John Loves, elder and younger, of Litle Gavan, John King's elder and younger, of Meikle Gavan, Alexander Clerk ther, William Cadwell, Umphray Barbour, in Reisk, James Niving ther, John Cadwell ther, Robert Niving ther, Robert Biggar ther, William Ore ther, John Pattisone, elder and younger, of Meikle Gavan, in Lochsyde, James Wilsone, in Mossend, Umphray Barbour ther, John Cadwall, in Hall off Beltrees, John Ore there, Thomas Cadwall ther, William Cadwall in Glendarloch, Andrew Robiesone in Trees, Robert Ore in Beltree Moore, William Cadwell in Brunthills, David Smith in Glenhead, Robert King ther, Robert Ore in Beltrees, James Robertson in Wardyeat, Thomas Ore in Muirhead, James and William Semples of Nethersheills, Gavine Patersone portioner ther, John Marshalls elder and younger ther, James Scot ther, John Patersone ther, John Fleyming of Chapel-toune, James Lowrie ther, John Walker ther, John Semple ther, Thomas Hamiltoune of Stonyhill, Robert Lausone of Dunloch, John Struthers of Chatoun hill, and Alexander Hamiltoune ther; doe remitte them to the lords commissioners of his majestie's justiciary to bee tryed criminally before them therefore, and grants warrant to his majestie's advocate to raise ane indytment against them, and to cause cite them to such a dyet as his lordship shall think fitte; and in respect that the for-named persons are all under bond to apear before the justices or councill upon Tuesday nixt the fyfteinth instant, and that they are accused of actuall treasone and rebellione, the saids lords doe heirby grant order and warrant for ther committment to the tolbooth of Edinburgh or Cannogate, ther to remaine till they be tryed. Extracted by me,

Sic Subscribitur, WILL. PATTERSONE.

Sir David Thiores, for the pannals, took instruments upon the lybel and his majestie's advocat's restricting and declareing thereof in manner forsaid, and alleadges (primo) that the lybell is nawayes relivant, because albeit that same doe bear that the pretendit meeting was at a place called Middletoun-hill, yet it neyther beares nor condescends within what shyre or paroch the said Mideltoun-hill doth locallie lye, and it is nottar that ther ar severall townes within the kingdome and hills therto belonging of the self same designatione: 1. Adhering to to the forsaid defence albeit the lybell hade been speciall as to the place, tyme and day, the pannalls cannot passe to the knowledge of ane inquest, because denyeing that pairt of the lybell and haill circumstances therof, It is offered to be provine (primo) the said pretendit meeting, iff any was, was absolutlie accidentall and occasionall, ther being at that place the king's common highway, wher ther is frequentlie a converse of severall persones and a publiet smiddie, wherat most of the countrey

therabout were served, and a schoole for teacheing of children, and it being alleadged to have been about midtyme of the day, ther was one who occasionallie came and told them that he hade ane proclamacione from king and councill, and invitted some fewe persons who wer ther at the smiddie to come and hear the samen read upon the top off the knowe, and they accordingly haveing rune up to hear the samen read, and the nighbouring herds, school-boyes and neighbours, both men and women, seeing the concurse, they flocked altogether to hear the proclamacione read allienarlie, and no other account.

2. To demonstrat that ther was no lesse or disloyall designe in that pretendit meeting, it is lykwayes offered to be provine, that all ther present did hear the proclamation fullie read out, with dew and reverence and attention, and ther heads discovered, and that efter the same was fullie read out, they all cryed unanimouslie God save the king, and a demonstratione of ther loyaltie and obedience threw up their bonnatts, and iff need beis, it is offered lykewayes to be provine, that when the reader of the proclamatione, or some other persone inquyred what they would doe, they did answer unanimously that they would goe and fight for the king whenever they were called, so that it is most groundless to pretend that ther was the least rebellious designe or practise off that pretendit meeting, especiallie seeing ther was non in all the parroch at the rebellion but one persone, who, upon takeing the bond, is suffred to live upon my lord Glasfurd's ground.

3. It is absolutlie denied that any off the pannalls who are alleadged to have been at that pretendit meeting hade any armes at all, except one, that being a wright and no heritor, came that morning to the smiddie for sharpeing his axe, and that ther was money collected or sent to the rebels is absolutlie denied: (2) Albeit the lybell as to that pretendit metting, and haill circumstances and agravations were all actuallie provine, except as to the sending of money, which is denyed, yet the pannalls nor non of theme, can passe to the knowledge of ane inquest therupon, because by his late majesties' gracious indemnitie, daited the twentie seventh of July, 1679, primo, all treasonable speeches, all favours done to rebels are expressly pardoned and indemnified, as also all such as were ingadged in the rebellione 1666, or in the late rebellione 1679, and particularlie all those who were lyable for advyseing or encouraging any thing contrair to the lawes, except such as heretors, hade been actuallie in that rebellione or contrabuted therto, by levies of men or money alienarlie.

4. As to the pretendit conversing with James Niving, the lybell cannot be sustained, because by his majestie's proclamation, daited the thretteinth of Aprill, sixteen hundred and aughtie-three, all process and pursuits for recepting, converseing and intercomoning, or doeing favours to, and encouradgeing of rebels, is apoynted to perscrybe and discharged to be

persewed efter the first of January, 1687, which day was long elapsed before the raising of this lybell.

2. Alleading that the said defence the lybell is nowayes relivant, as to the converse with James Niving, because the lybell neyther condescends upon day, place, way, maner of the said pretendit converse or recept: 3. The lybell is foundit upon alleadged converseing with James Niving, in Beltrees, wheras it is absolutelie denyed that the said James Niving, was ever at the rebellion, or that he was either declared fugitive, or put in printed fugitive roll, nor is it possible he would be justlie put in the said roll, seeing its offred positivlie to be provine the said James Nivin, in Beltrees, did actuallie compeir and enter the pannall before the lords commissioners of justiciary at Glasgow, and was discust by them.

2. That the said James Nivine, in Beltrees, was lykwayes cited and apeired before the saids lords of privie councill as a witness, and was examined and discust by them as a loyall persone, which no man will pretend they would have done to a nottorious rebell, and he is not the persone that is in the roll, the roll bearing only James Nivin in Risk, wheras the said James Nivin in Beltrees was dwelling actuallie in Beltrees the tyme off the rebellione, makeing and printeing the roll, and not in risk, and ther ar severall other James Nivings, in that paroch denyeing the lybell, or that the pannalls was heritors at the tyme.

Sir *Patrick Hume*, for the persewer, opens the lybell, which bears expressly that the pannals did convene in armes, within the shyre of Renfrew, the week befor the defate of the rebels, and did exercise themselves in a military posture, and kepted their rendezvouze at Mideltoun-hill, which is in the shyre off Renfrew, the week befor the defate off the rebels, at Bothwell-bridge, so that both the tyme and the place is sufficientlie condiscendit upon in the lybell. 2. That the defenders ther meeting together was accidentall is contrair to the lybell, seeing it is positivlie offred to be provine that they did convene and rendezvouze, and were exercised efter a military way by those that comandit them, and did march up and downe the countrey in that maner severall dayes, and were heard say they would goe and joyne with the rebels, at Bothwell-bridge, and evry article off the lybell, as to the conveneing and marching up and downe the countrey, and using military dissipline, traiveing them to keep ther order and fight, evry one of these articles are relivant separatim, much more when all is joyned together as in this case.

3. It is frivolous to pretend that they convened to hear the king's proclamation, and that when they heard it proclaimed they gave testimony of joy, seeing that is likwayes contrair to the lybell, and the hearing a proclamation is so farr from liberating them of the cryme, that it is rather ane aggravatione of ther guilt, seeing it is therby expressly de-

clared, that as the west countreys insurrectione was a manifest rebellione, and that the conveneing of persons together without authoritie, especiallie such ane number being fyftie or sixtie in armes, without authoritie, did clearly fall under the acts of parliament and the said proclamatione, as also by the said proclamatione all persons who hade mett together without authoritie were comandit to render themselves to the earle of Linlithgow, then commander off the forces, which none off thir persons did, which is a clear demonstration off ther guilt.

4. That the defenders hade no armes ought lykwayes to be repelled, as lykwayes contrair to the lybell, and albeit some of them hade not armes, yet seeing they convocat without warrant from authoritie, and ther being armes amongst them, the lybell is unquestionable relivant, seeing ther very presence with others that hade armes, albeit themselves hade been without armes, it is sufficient to inferr the cryme off treason, as has been already disydit by the lords of justiciary in several cases, particularlie in Lermonts; but much more ought it to inferr the cryme of treason against the defenders in this case, they haveing meet and rendezvouzed together in that countrey, and at that tyme when the other rebels were up in rebellione; and albeit it is not necessar, yet iff need were, it could be made appear, that they actuallie declared that they were to joyne with the rebels at Bothwell-bridge.

5. The defenders cannot be secured by the act off indemnitie, because they expresslie fall under the exceptione off the act, they being heritors, and actuallie in the rebellione, and did contribut therto; and albeit it be addit by the act by the levies of men or money, yet these words are but exegitick; and iff any heritor any maner off way contribute to the rebellione, he falls under the exceptione off the act, but much more in this case, wher the defenders themselves were levied, and did put themselves in a military posture, which makes them clearlie fall under the exceptione of the act that they contribute.

6. As to the proclamatione in Apryll, 1683, it cannot secure the defenders, nore does this actione perscrybe; for first that proclamatione, as to the poynt of perscriptione, relates only to conversing and intercomoneing, but not as to such as have been actuallie in rebellione, and even in that case, they ar not to be free, but only restricted to ane arbitrary punishment, nixt perscriptione cannot be obrudit in this case, because thir same defenders were persewed befor the lords of privie councill, within thir three yeares befor the first of January, 1687, which is ane sufficient interruption, and the lords of privie councill were so convinced of the defenders guiltiness off the crymes lybelled, that upon the cognitione taken as to these crymes, did remit the defenders to the lords off justiciary to be persewed for high treason, and appoynted his majestie's advo-

cate to insist against them, which upon the matter clears the poynts of relivance upon this lybell, that it is unquestionable relivant to in enferre treasone against the defenders, for iff the lords of privie counceill came to consider the lybell and precognition taken hade not amounted to treasone, and that it was lyk-wayes provine, they would have judged them themselves, but finding that the cryme went higher then any arbitrary punishment, they thought it fitt to remitt the defenders to be criminallie persewed for treasone, which both clears the poynt off relivancie, and is *probatio probata* as to the cryme.

7. As to the converseing with James Nivine, the lybell is opponed, that the defenders conversed with him efter he was declared fugitive, which is sufficient to inferr the cryme against them upon the account of converse, without condescending upon any particular tyme, that being a cryme *omni tempore illicitum*, and the said James Nivine was a nottorious rebell, being a captaine, and the persone who instructed in all ther millitary dissipline; and it doth not import that he is designet by the lybell to be in Beltrees, and that he was designed by the proclamation in Risk, because he dwelt in Beltrees the tyme of this lybell, and in Risk in 1679, the tyme of the rebellione, and *quando constat de persona*, it is no prejudice, suppose ther hade been error in designatione as there was not, and albeit he hade appeired befor the lords of justiciary at Glasgow, yet he did not put the leidges in *bona fide* to converse with him, seeing iff he appeared ther at all, is denyed, yet he was not conveened ther for the cryme off rebellione, but might only been as a witness, so that *hoc non agebatur*, that he should be free and tryed for any cryme, nor was he declared free, and the samen answer is repeatted, in case it could be made apear, that he was cited before the lords of privie counceill as a wittness, seeing it was ordinary for to make use off the greatest rebels as witness, and yet the makeing use off them as wittness putts not the leidges in *bona fide* to converse with them.

Sir George M'Kenzie, of Roshaugh, for the pannalls, alleadges, that the lybell as it was declared by my lord advocat and accepted by the pannalls, viz. that they mustered in armes, declared that they would adhere to the rebels, and contributed money, is found relivant of consent, nor will the pannalls procourators defend any such traitors, but as the lybell is now insisted on, viz. evry poynt *separatim* is relevant; they crave leave to deffer extreamly in the principle as inconsistent with all humaine societie and the nature of mankind, for as to the first brench, viz. that the pannalls did meet and muster may conceive the samen is foundit upon no act of parliament, nor no part of the common law to inferr treasone, in so farr as convocatione, is a separat cryme from treasone, and even convocatione in armes, with mustering, except ther were ane considerable number above ane hunder armed and continowing in

armes, does not at all inferr ane cryme, ther being nothing more ordinar in Scotland, and all the pairts off Europe then upon accidentall occasions, such as burrialls, marriages, neighbour feeds, fear of harships, huntings, keeping of watches, weaponshawings, and many other occasiones they use aither by comand off the heritors or without comand, upon emergents to unite, administer, and it is oft tymes verie advantageous for the government; as for instance, iff a prisoner were to be rescued that were taken for a cryme, it were very just and farr from treasone for any heritor to gather together his people all in armes and muster, or iff ther were noise or aprehensione off rysing off rebels in the neighbourhead, as in this case it was a duty and comendable in his majestie's leidges to meet and muster, and that such meetings were no crymes, was expresslie found by the lords off justiciarie in the proces persewed be the earl of Seaforth contra assunt efter most contentious debate; and even the fyfth act of the first session and first parliament of king Charles the Second, dischargeing the ryseing in armes being but generall words, has been declared by that decision not to be extendit to any rysings, except wher the number exceedeth ane hunder men; and that it was done in oppositione to the king's royall authoritie upon ane public account, and that even the ryseing in oppositione to his majestie's commissione off fyre, sword, tho' warranted by authoritie, did inferr no such cryme, and this is foundit very justlie upon the nature and temprament of mankind, which is to be the rule in all decissions, for ther is nothing more naturall and customary amongst comon people then to rune together, not only upon these occasious, but even by ignorance or novillty or missrepresentatione and therefor no lawyer hath been so barbarous, as from such subitanious acts, whereupon no prejudice followed to inferre so hynous a cryme; and the act of parliament itself, declaring only the ryseing in armes against the king to be treasone, does from these words and the narrative off the act founding upon the great disorders that have been committed in the late horrid rebellions, requyre two things expresslie from the words; first, that the ryseing should be in armes, and the denomination must be taken from the greater pairt, nor could there be any thing more absurd then to think that threttie or fourtie herds driveling themselves, tho' no man should have a sword, that this could be called a ryseing in armes: 2. It requyres that it most be against the king's authoritie, and so ther most be something exprest to shew that it was against the king's authoritie, or else all former accidents enumerat might have against the interest off mankynd, and the designe off legislators amounted to treasone, which was never designed for tho' wher the greater pairties in armes, any one man wanting armes, being present, is justlie; yet except the greater or a considerable pairt were yet in armes, no armless convocatione was found to be treasone.

3. But even these qualificationes, irrelevant as they ar, ar fullie taken off by this exculpatione offred to be provine, viz. that the number did not exceed fourtie or fyftie, that these were persons could have no designe, such as herds-women and children, for the greater pairt: that the occasione and ryse off the meeting was accidentall; that they read the king's proclamatione, and cryed God blisse the king; that bareheaded most off them, and generallie it was declared that they would owne the king's authoritie and goe to his armie and fight for him; that ther was but two or three off that little number that hade armes; that some off those things called armes, viz. the axe, were naturally fitt to be brought to the smiddie wher they were by a countrey man, for ane countrey use, and was but a common axe, the bearer being a wright to his trade; that they hade dissipat within ane hour, and never meet againe, nor never randevouzed thereafter, as people in rebellione used to doe, all which qualifications ar very consistent with the lybell as it is now restricted, for tho' it were indeed inconsistent with the lybell as lybelled, and which is found relivant, yet certainly it only taks off that ane general poynt of the people *per se*, viz. that some people mett and randevoused, and even in general so favourable is the pairt off the defenders that ane exculpatione, though contrair to the lybell, is sustained in criminalls, or else a man might be overtaken for mustering his owne people in armes to bring back ane harship, for it would certainly in that case be provine that they mett and driveled off that law did not allow circumstances to be provine sufficient to qualifie restrict, and take of the lybel.

3. Though some particular persons hade said they would goe to the rebellione, which cannot be proven, yet except it would be provine that this was generallie resolved upon at the meeting which is indeed weell and judicallie lybelled these words 'suos tenent authores et *Novum Caput sequitur*;' but that qualificatione is a law,* taken off by offering to prove that it was generallie spoken and resolved that they would serve the king, and cried universalie God blisse him, and read his proclamatione with respect, which in dubio is much stronger and ought to be preponderat, the words off any ane or two ignorant bodes, which eyther might not be heard or deserved not to be regairdit, to which branch the defence is lykwayes joyned, that pairt of the indemnitie 1679, remitting all words spoken, and the lords commissioners of Justiciary ar disyred to consider what a dangerous condition mankynd were in if in a company off four or fyve hundred loyall men, one or two should be by ane extravagant expressions, neither heard it nor had it by the company, inferr them all in a common guilt, and the most that could inferr is a different cryme from this, viz. concealling and not revealling, which is not lybelled hear, and in which case it

most be provine that the words were heard or could not, but have been heard by the company, they being in one rounge and serrious upon the affair, which can never be extendit to words spoken in a company in the feilds by sensles bodies.

To the 2nd poynt off the defence insisted upon, as to Nivin converse with him or recepting him, cannot inferr treasone, because the persone alleadged denounced fugitive is niving in risk, and the replye made that this is but ane wrong designatione, and that *constat de personæ* is most absurd and irrelivant; for when the designatione is not *de substantia actus*, as in contracts, testaments, &c. *falsa designatio non vitiat contractum*, yet wher the designatione is *de substantia actus*, as in all cases of certioration ther, except the designatione condescendit on be provine, ther can be no cryme, as for instance in our case, because ther may be many men off one name dwelling in the neighbourhead ther, specifice designations are requisit *quoad* the putting the leidges in *mala fide*, for iff ther were no designatione certainly the denunciatione could inferr no guilt; *ergo*, when the law requyres a designatione, a wrong designation is no designation, especiallie as to the place off dwelling, so ignorant poor people, such as the pannalls, requyre clear marks; such as designationes off the place, the parroch, &c. or else the lawe would be in a snare to them, and they would be overtaken for ignorance and not for guilt, and why did not only our law, but the criminal itself, requyre the designations to be printed and publict except for this end, and since equipollences ar not requyred by our lawe, even in such things as ar *stricti juris*, much lesse ought they to be receaved to inferr crymes, especially in such dangerous crymes as treason, and in such qualifications as converse, which of its own nature is hard enough for any common man, but much less ought this to be allowed in this case, wher it is positivlie offered to be provine, that ther were two more James Nivings within a myle, so that this persone was no mor James Nivin off Risk then they were, for non off them were ther.—

2. Iff ane equipollence were to be receaved, it behoved to be in these termes, viz. that albeit he dwelt not in Risk, yet it is offred positivlie to be provine that they were in *mala fide* to converse with this Nivine, because they sawe him actuallie in armes, which supplies the want of denunciation, but when he was never in armes and hear present to byd a legall tryall, when he dwelt not in Risk the tyme of the denunciatione, when ther were others off the same name dwelling within two myles, and when the common measure taken to informe the leidges, viz. the publict roll printed by authoritie off the counsell, when they hade reason to beleive that was not the man when he conversed with officers, judges, at Kirk and Mercat, as other men did, for who when a man is rightly designed as Duchall's brother, was these qualificationes be not sufficient

* So in the Original.

per se, yet wher the persone is not rightly designed, and so they have not done all that the law allowes and comands expresslie, it is most absurd to pretend that mankynd could be sure with such principles. As to what is answered to the act of indemnitie 1683, by which it is contentit that those pannalls were not persewed *debito tempore* conforme to the indemnitie. It is duplyed, that the indemnitie has taken off all persuits, except such as were intended *debito tempore* befor the first of January 1687; and therfor, tho' a persuit intended befor that tyme might be insisted upon, yet no new process could be raised, for else the interruption appoynted for the prescriptione hade been absolutlie elusione and uselese, and when the persewer insists in that lybell, he shall have ane answer.

2. That lybell, iff it were insisted in, is absolutlie irrelevant, and ther is no lybell, for conversing with Nivine is absolutly perscrybed, as wanting a warrand 'et non legitime fieri et non fieri equiparantur.'

3. That process did absolutely seaze by the defenders getting a protestatione for not insisting which is extracted, and so *perit instantia*, and it could not have been continewed by the councill nor could the act off councill, tho *debito tempore*, take away the indemnity and *jus quæsitum* to the pairtie, and much more when the act off councill is long posterior, viz. in March, for they being once secure by the indemnitie as to recept and harbouring which is all that is contentit here ane act of councill two moneths efter the finishing off the prescriptione, and the protestation obtained for not insisting cannot revive a cryme when it is extinguished, nor any such replyes or streached grounds sutable to his majestie's gracious inclinatione so ample now declared in favours off all those poor people whose errors he has in his clemencie imputed not to arryse from the unkyndnes to him and his familie, but from ignorance, mistake or oppressione, and iff these persons hade beene guilty, they hade been found guilty long or now.

His *Majestie's Advocat* oppons the lybell and adheres to the former answers, and as to the place of the randevouze, the designation of Middeltoun-hill, which is in the same parrock in the midst off the pannalls interest, being a knowen place, is sufficient, and ther was never a lybell restricted to a more precise and nottor tyme then the week before the defate off Bothwell bridge; and as to that pairt of the defence that the randevouze being without armes and accidentall, it doth not inferr the paine of the lybell: it is replied, that in this case, it is not a simple convocation off his majestie's leidges that is lybelled, or convocatione in a military posture excusing the pannalls in forme of warr disposed in company under the command officers, and marching according to the rules and methods off souldiers by rank and fyle, receaving the ordinary words of comand, goeing to the right and left hand, and doeing

evry thing that sojores, drivled and discipline, or used to doe, and this randevouze being in a tyme when ther was ane open rebellione in the kingdome within a dayes march of the randevouz, which rebellione as it hade stood for a considerable tyme, and was nottor so by publict proclamation: it was declared a rebellione by the letters of exculpatione, it appeares that the pannalls had one off the proclamationes and so they would pretend no ignorance; but whill they were randevouzing in forme of warr, ther was ane open rebellione at ther doores, with which they were in a capacitie to joyne at ther pleasure, so that every one off these steps *per se* ar relivant convocatione off his majestie's leidges in fear or posture of warr, tho ther had been no rebellione or armes amongst them, *et multo magis*, when a rebellione infested that same country, and the convocatione off the leidges in itself is a cryme, and the usurping off his majestie's prerogative, and therfor in the first parliament off king Charles the second these poynts ar stated in two distinct poynts and acts, wherof the first being the fourth act asserts and declares his majestie's royall prerogative in makeing of leagues and conventions of his subjects, and the act relates to a former act of parliament of king James the sixt, wherby it is statut that none off his majestie's subjects, of whatsoever state or conditione, presume to convocat, convene or assemble, without his majestie's speciall comand or licence, and by the subsequent act of his majestie's prerogative in making off peace and warr, raising armies, is distinctlie asserted, so that the convocatione off the leidges without warrand and authoritie, tho' the randevouzeing in armes were not libelled, were in itself a cryme, which by the seventie sevent act parliament, fourteint king James the second, which is lykwayes renewed by king James the fourth, such unwarrantable convocations off the leidges is declered to inferr confiscatione of goods, and the lyfe off the contravener, and amongst all nations levieing of warr or raiseing in armies, is treasone nowe the greatest; armies have been raised, marshalled, modelled and exercised, without any armes, and the raiseing off ane army imports not armes for *conscribere manum*, or to levie any armie imports no more but the raiseing and modelling the bodies off the men which ar ordinarily armed from the magazines of these who raise the armies, and most of the sojores that ar raised ar incapable to cary armes before they be listed and exercised, and by the policie off this kingdome, upon the suppitiones and evidences of dissatisfactione in the West countrey to the government, they have been severall tymes ordained to be disarmed, ane the armes of the West countrey were actuallie taken from them and put into garisons, and iff it were sustained that a randevouze of men, mustred and exercised in forme off warr, did not inferr a rebellione, except they had armes, then it might be impossible that the West countrey could rebell, they being all disarmed, so that though ther hade been no

armes in this case, the randevouzing off a considerable number of men was certainly a formall rebellione; but to testifie the inclinations of the pannalls first, tho' they be lowe and mean persons who never used to cary any armes, yet they had at this randevouze all the armes in ther power, and which they hade kept up and concealled when they were ordored to be disarmed, and such armes as ar not usuall in the lowe countrey *Lochaber exes*, which ar not off promiscuous use, but only used in expeditions, and they hade guns and swords amongst them, and to testifie ther forwardnes they fyred such armes as they had, and Hugh Love who was at Bothwell-bridge with the rebels was actuallie sent from the rebels to keep that randevouze; and Hugh Love, who is lykwayes in the printed fugitive roll, did actualie, as one off the captaines exercise the pannalls, and James Niving was the other captaine, so that ther was not only exerciseing in fear of wear, and a standing rebellione in the tyme, but ane actual intercourse and communication betwixt the pannalls and the rebels, besyds the collecting of three hundreth merks of suplie, and the sending them assurance that they were to joyne with them upon the Munday thereafter; but, the defate falling out upon Sunday, this meeting was prevented, and in the year 1666, Cadwell, Kersland, and many other gentlemen, were justlie forfaulted, tho they ther were never randevouzed or made appearance, but only designed to joyne the rebels att Pentland-hills, who were lykwayes broken befor they came up; and whereas it is pretendit that ther meeting was only accidentall or to hear his majestie's proclamation, which they did with reverence, and signified ther intentiones to goe to his service, it is answered, that convocation in forme of war the tyme of rebellione without authoritie, is contrair to authoritie, and the want off a warrand, tho' the pannalls principles and countrey were unsuspect, it were sufficient; yet in this case ther can be no favourable constructione off ther designe, because the proclamatione off councill in anno 1679, requyreing all heretors to attend his majestie's host in repressing of the rebels, did particularlie except the western shyres, so that these heritors hade nether warrand, call nor trust to attend his majestie's host, and by the proclamatione, such as were conveyened were ordained to render themselves within twentiefour hours, so that if the reading off the proclamatione hade been ther bussines, they would first have understood they were not bound to ryse for the king, having risen without his authoritie, which is against him. They ought immediatly to have rendered themselves, whereas after the reading off the pretendit proclamatione to have randevouzed in forme off weir, it was a most open and avowed rebellion, and the proclamatione is so farr from exculpateing that it evidently aggravats the guilt, and shoves they were irreclaimable. As to the other poynt in relatione to converse with Nivin, and recepting him upon ther ground, the

proclamatione in anno 1683, did noe wayes secure the pannalls, for by that proclamation, It was declared that no persone should be persewed for recept or intercomoning, who is not cited for these crymes befor the first off January 1687, so that the citatione in this case is directly in the termes of the proclamation, and the proclamatione does not at all restrict the persuits intended befor January 1687, nor hade it any relatione to the persuits, but bears expresslie the persons shall not be persewed who ar not cited, so that the citatione was ane interruptione, which does not restrict to the same proces, but leaves the matter intire to be persewed by any compitent proces as if the proclamatione and indemnitie intendit, hade never been emitted or published, and it is certaine in all interruptions that a citatione in relatione to the subject perscrybes the right or actione befor all judicatories, and in all other process, and as ane citatione befor ane inferior court or ane supreme court, is sufficient to interrupt or prescrysbe the right or actione before any other court without being restricted to the actione which made the interruptione; so in this case the citatione before the councill makes the case as intire as befor the proclamatione: and whereas it is pretendit, that Nivin is designed James Nivin off Risk, in the printed fugitive roll, tho at that tyme he lived at Beltrees, and is now cited as living ther; It is answered the matter of fact is this, in anno 1679, James Niven lived at Risk when he committed the rebellione, and was captaine or drivill-master to the pannalls, and lived at Risk for severall years thereafter, and suppose he hade gone to Beltrees at the tyme the fugitive roll was printed, Beltrees being in the same parroch, within half a myle off the Risk, his being designed in Risk with relatione to the tyme off his rebellione and denunciatione, was nether *falsa designatio* nor such a mistake as could have defendit the pannalls; for, 1. He being the drivill-maister and captaine, tho he hade never been denounced, yet the nottoritie off his rebellione to the pannalls made them fall under the lawe off harbouring and recepting rebels, and since designations in the fugitive roll ar only necessar for certioratione off such persons as ar off proper knowledge may not know the guilt off the denounced persone, since these pannalls both knew that he exercised them, and that he lived at Risk many years thereafter the denunciation could not indure any upon ther pairt, and in this case it is not accidentall converse, but since he was ther captaine at Middleton-hill, the pannalls hade evry day and year intertained James Nivin upon ther ground, and he is actuallie a tenent to them, and he has only flitted from one rounge to ane other within that baroney, so that in all the process that ever were befor this court ther was never a more oppine designe of rebellione, nor a more constant recept and harbour off a knowen rebell and ringleader, and his being dismisst from the justice court unless he hade been assolyed is no defence, and his majestie's secret committee or ministers of state may make what use off

rebells they think fitt for his service, but the adduceing a rebell as a wittness in ane ouccult obstruse process as the inquirye against Mr. Ezekeiell Montgomerie, who being a shirreff depute, was accused and dismissed, and covering rebells for money, wheroff this Nivin was one, can import no defence.

Sir *David Thiores*, ffor the pannalls, repeitts and oppons his former defences and duplie, especiallie those foundit upon the act of indemnitie 1679, and proclamation 1683; and farder adds, that the meeting lybelled can never be reputt a randevouze, seing randevouze off ther owne nature presuposes ane place of meeting previouslie apoynted, and advertisment previouslie given to meet ther, neyther off which can be pretendit in this case, the same being simplie occasionall and accidentall, which is offered to be provine, so that the haill acts of parliament anent unwarrantable convocations, ryseing in armes, and concluding the paine of treasons, can never quadrat with this case.

2. It is offred to be provine as these who were at the meeting did come severallie one by one, so the meeting as said is did not last above two or three hours at most, and that they did separat upon that individuall spott of ground, and within the said three hours efter the beginning of the meeting were all at ther respective homes and imployments, and its absolutely denyed that they did march, in rank and fyle, from or to any place from the said spott of ground wher the meiting was.

3. That any pretendit marching or exercising was allienarlie upon the place wher the proclamations was read, and that for the most part by shipherds and school-boys, servant women, and that out off sport and for divertisment allienarlie.

4. That at the said pretendit meeting, the pannalls did not only cry God save the King! but also declaired that they would never joyne with the rebells, and would be readie to fight with the king when called, and that the tyme of their pretendit marcheing, they declaired that they would breid themselves to be sojores for the king, so that it is admeired upon what pretence his majestie's advocat cane crave that the pannalls should be found guilty of treasons upon such ane accidentall and impremiditat meitting, wher so much loyaltie was exprest, especiallie seeing as a farder demonstratione off the pannalls loyaltie, ther was nether themselves nor any of ther families, nor within the bounds, did ever offer to joyne themselves with the rebells; but then, and ever since, upon all occasiones, have evidenced ther obedience to his majestie, by takeing ther oathes of alleadgance; and as to severalls off the pannalls offers to prove *alibi* from sune ryseing to sune setting, viz. John Pattiesone and the two William Cadwells, as to Robert Orr, in Bel-treemoir, and James Robiesone, in Wardzet, they ar not so much as cited befor January 1687. As to the most pairt of the pannalls, they were not heretors the tyme of the rebel-

lione, viz. John Love, in East Gavan; John King, elder, in West Gavan; William Cadwell, ther; William Orr, in Risk; John Pattiesone, in Lochsyde; James Wilsone, in Mossend; John Cadwell, in Hall of Glenhead; Robert Orr, in Beltrees; and William Cadwell, in Glendarloch.

Sir *George M'Kenzie* adds, that as to that conclusion, that some off the pannalls ar apeirand aires to persons who wer at the rebellione, but are now dead, the sumonds is opposed, bearing no such proposition nor subsumptione, that such and such persons were at the rebellione but are now dead, and therfor that they ought to be forefaulted, and ther apeirand aires cited to heare and see the forfeiture orderlie led and deduced.

My *Lord Advocat* answers, as to the conversatione, randevouzing, modeling and exercising a company of men the tyme off a standing rebellione, is, *per se separatim*, relevant to inferr treasons; and this being a poynt that the government and securitie off the monarchie is extreemly concerned in, his majestie's advocat doth desyre in a specifick and distinct interloquitor upon this poynt *per se*, besydes the other grounds formerlie represented, That the convocatione and assembling of his majestie's leidges in considerable bodies and companyes, the formeing, modeling and exercising them in forme of weir, without warrand from authoritie, it is a direct usurpatione of his majestie's authoritie and royall prerogative, asserted expresslie in the fourt' act, first session, first parliament off king Charles the second, that all convocationes, especiallie in posture off weir and dureing the standing off rebellione, ar necessarlie to be understood contrair and opposit to his majestie's authoritie, when they ar not by his warrand or by warrand off those deraving commissione from his majestie; and albeit judiciall meetings are expresslie excepted, and the exceptione itself shoves that otherwayes the generall rule would have includit them; and the lawfull meittings to faires, mercats and other publict occasiones, which ar allowed by the concessions of these faires, and the lawes has been so jeallous in this poynt, that it has restrained the number off persons that are allowed to meet at marriages, burrialls, &c. wherby a precise number is perscrybed that cane be invited in these cases, and much lesse off randevouzeing; but when the case is not ane simple convocatione, but a modelling into ane formed force, under captaines, ther can be no pretext, and iff this were allowed, evry parroch in the west of Scotland might, when rebellione was standing, have chosen captaines, formed and exercised themselves; and the late rebellione and invasion, when the late earle of Argyle brought home ane hundred thousand stand off armes, if it hade been saiff to have modelled and raised the cuntry without armes, it hade been easie to have furnished them with these armes when they were raised, and therfor our law for publict ex-

pediencie sake has declared that the right of the soveraigne and ane usurpatione in the subject to convocat or assemble in companyes, especiallie in forme and fear of weir, and during a standing rebellion, and albeit the pannalls had no armes when they rendezvouzed, yet it will be provine they had severalls, yet upon ther joyning the rebels they might expect to have received armes, and its certaine the concourse of greet multitudes, even without armes, was able to have shuffled and suprest the standing force of the kingdome: As to the grounds of exculpation, tho they were true and could be provine by honest and unsuspect wittness as they ar false, and only presumed to be provine by persons absolutlie disaffected and involved in the same cryme, yet the lybell being provine, and that pairt being sustained that the convocatione and rendezvouzes was a rebellion to which his majestie's advocat expects a particular interloquitor, nothing but a remissione cane purge that cryme, and protestationes to paliat the rebellion of that rendezvouze to secure the pannalls till they had once joynd the rebels, cannot take off the crimes committed be the rendezvouze, wherby he was *ius quesitum* to the king, and all that is pretendit; tho' it were true, is but *protestatio contraria facto*; and iff persons who are in rebellion shall pretend to loyaltie or the interest of the crowne and kingdome, yet that could not excuse or defend from any treasonable practise, and during all the oppen rebellions in the last age, ther was non aryved to that height as to disowne the king, or to pretend that they were in rebellion against him, but they did be for the king in ther owne treasonable wayes, and when the process against captaine Niven *ex incontinenti*, both befor and efter he exprest as loyall and dutifull sentiments as any man would doe, and yet haveing exprest some words which are interpret to be treason, these protestationes off the height off loyaltie at the same instant did not in the least defend him; but treason once comitted can only be remitted by a remission, and pairties have not power to dispense with themselves or remitt ther owne crimes by adjecting inconsistent words of loyaltie to the treasonable actiones they committ, and to no rationall constructione oppin acts ar to be qualified by words, but in doubtfull words or doubtfull actiones words may be allowed from persons unsuspect to clear the designe off the actione, but wher the matter does not consist in a designe or project but in a formed direct act of rebellion in a publick rendezvouze, it were absurd to allow words inconsistent to retriue or defend the same.

2. It is much easier to believe that this wordld was produced by ane accidentall concourse off* then to think that all these men mett at Middletoun-hill with what armes they hade, and such armes as no bodie but in ane expeditione carry without a designe, and iff nothing hade followed but ane convocatione the acci-

dentall meiting might passe, but ther formeing themselves in rank and fyle, and exercising themselves conforme to the methods off warr, iff that was ane accident they most have great charitie for the pannalls cane believe it, and it is certaine never men were drivelled, modeled and dissiplined without some previous proposal, treatie or designe, which cannot be presumed to be for authoritie, for nothing done without authoritie and contrair to law can be sustained as a loyall act; and in some case, wher persons off unsuspect loyaltie have broken expresslie lawes with good designs for ther prince and commonwealth, yet the excess and breach of law doth render the pairties lyable to the penaltie and to need the pardone of the soveraigne, as Manlius execut his sone for obtaineing a great victorie by feighting a battall contrair to his order; and therfor the designes in this rendezvouze, tho they were as certainly good as they were certainly bad, could not defend the pannalls; and as to the reverence in hearing the proclamation, the last word of all proclamationes being God save the king, these words behoved to be pronounced with the rest off the proclamation, which inferrs not the least duty off loyaltie; and iff the proclamatione was read, as it shewes no accidentall meiting but a project to advyse according to the present circumstances, and the pannalls joyning, was ther found mistake that the king hade no sufficient force to reduce them, but by proclamationes to command them to lay downe armes, and it was not a due obedience to these comands to rendezvouze thereafter when by that proclamatione the westerne shyres were excepted from attending his majestie's host, and iff ther was any thing said importing ther inclinationes to goe to the king's service, it most be understood in their owne treasonable style that it was for the king's service in opposition off his persone and in opposition to these haveing commission from him and his lawes; and as to the defence of *alibi*, it is directly contrair to the lybell, and so cannot be admitted regularlie in any case, and much more in cases of treason, which ar the most privileged, *et facili probacionis*; and in many natione, particularlie in England, no *alibi* is allowed to take off a positive probatione of the king's evidence, and tho' maters consisting with the lybell, which in ane effect resolved in ane exceptione are, and ought to be allowed to be provine be way of exculpatione, yet this being ane direct denyall off the lybell, it were to grant the pannalls the sole probatione, and as this is not to be sustained even in civilibus, much less in crimes, wher tho' the pannalls succumb in proveing this *alibi*, the king's advocat is not releived from the burding of proveing his lybell, but in this case the rendezvouze being the week befor Bothwell-bridge, and it can be positivlie provine that ther wer three rendezvouzes upon three distinct dayes, Wednesday, Thursday and Friday, tho' he burdens himself but with one ane *alibi* in this caice behoved to be beyond two or three hunder myles, and all that is pretend it is to

* Sic in Orig.

prove that some of the pannalls, some off the dayes of that weeke, were at three myles distance, which can never be sustained, especiallie since by the pannalls owne defence it is asserted, that they randevouzed but three hours, and about three hours they were at ther owne houses and about ther owne affairs; so that it being in June they might be provine to have been twelve hours at any other place within three myles, so that both being most consistant the exculpatione cannot be sustained; ffor in all lawe and *alibi* most importane naturall impossibilitie that the pannalls was at the place lybelled: and whereas it is pretendit that severalls of the pannalls were not heritors, and that they offer dispositions of all lands they hade the tyme off the randevouze, it is answered, that the makeing of ane dispositione will not secure ane rebell who is ane heritor from underlyeing the paine off death and other effects of forfaulture, and therfor the giving in such dispositions cannot clear the heritors who were rebels, but the doome of forfaulture ought to be pronounced against him, since the pannalls ar in possessione of the lands holden and reputt heritors, and the persuit being at the instance of the superior, his infestment in the baroney most carry the propertie except he were excludit by ther particular infestments, and it cannot be beleived that he would persewe them as heritors in prejudice off himself, iff they were not holden and reputt heritors; and his majestie's interest upon the quinquenniall might be eludit iff his majestie's right were not foundit upon the doome off forfaulture, which no voluntar dispositione can suplie, but on the contrair it doth insinuat that the rebell had no right to the lands he posesst since he could not be forfault as ane heritor, and therfor that the pannalls cane pretend no just prejudice efter they ar found guilty as heritors, the indemnitie upon the dispositions will secure them as to ther lives, and in this way the pannall has no prejudice, and by receaveing dispositione and preventing forfaultures, the king will be absolutlie excludit from the benefite of the forfaulture, and in this case ther be *adonator*, yet his majestie's interest is equallie concerned, and the preparative will exclude him in all tyme coming: and wheras it is pretendit that ther is no warrand for sumonding the apearand aires of John Love, elder, and that ther is a known style that ought to be observed in citteing the apearand aires to hear the doom of forfaulture pronounced against ther predecessors; it is answered, that the letters are opponed, beareing expresslie that John Love, elder, was at the randevouze, and so in oppin rebellion, and that he is deceast ther, is ane expresse warrand to call the relict and nearest of kine, and John Love, his eldest sone, to hear the dome of forfaulture pronounced against him, and the executiones ar speciall, and ther is no necessitie to lybell ane act of parliament, tho' the particular act be lybelled, because forfaultures in absence of traitors for perduellione is conforme to the comon law, and it was practised in this king-

dome by the justices befor the act of parliament was made, and the act of parliament doth not only ratifie ther proceder, and in criminall lybells ther is no precise rigorous style, but wher the matter is sufficiently exprest, the lybell ought to be sustained, and in this case it is both formallie and sufficiently exprest, that Love, elder, was in the rebellione and dead, and his relict and nearest off kine ar cited to hear sentence pronounced against him.

Sir *Patrick Hume* adds, 1. That the defenders did not joyne with the rebels at Bothwell-bridge; it is answered, that they being convened in a military posture, they were in a formed rebellione by themselves, which is relevant to inferr the cryme of treason, especiallie seeing, if need were, it is offred to be provine, that it was given out by the company that they designed to goe out to Bothwell-bridge, and albeit the rebels at Bothwell-bridge ware defeated befor the joyning, yet that cannot liberat the defenders.

2. The proclamacione in Apryll, 1683, is not taken off by the pretendit protestatione for not insisting, seeing it doth not appear that that protestatione was admitted by the lords of privie councill, and albeit it hade, yet it takes not off the interruptione, but on the contrair the protestatione itself instruct the interruptione.

3. Wheras it is pretendit that severalls of the pannalls were not heritors at the tyme, it is farder adit, that albeit they had not been heritors, yet being now heritors they ought to be forfaulted because the forfaulture is drawne back to the tyme of the committing of the cryme, so that whatever was acquyred by the rebels since the tyme belongs to the king; for if the defenders had been forfaulted at that tyme, iff they hade thereafter acquyred ane estate by themselves, or hade fallen to ane estate belonging to ther predcessors, it would have pertained to the king, so by the same reasone the defenders being now forfaulted, ther lands will belong to the king, in the same maner of way as iff the same hade hade ane estate the tyme of the rebellione.

4. The defenders, who ar not heritors, have conversed with Nivine since they were heritors, and consequently falls under the act of parliament anent, converse and intercomoning.

5. As to M^r Leod, of Assints case, it doth not at all meitt this present case, because it was a persuit betwixt privat pairties, and wher a convocatione of above ane hundred men was expresslie lybelled, and that the convocatione was efter publicatione of letters of intercomoning against Assint, and in which termes the lords of justiciarie sustained the lybell, both as to the number and qualificatione, the takeing test or oath of alleadgence is not instructed, nor doth it exoner them.

Sir *Georg McKenzie* duplyes, That he and the others procourators for the pannalls ar verie far from debaiteing that it is lawfull to raise men without armes, or that treason being committed can be salved by a protestatione, but

that which is debated single is this precise poynt, that the meitting of some few men in the case hear circumstantial and offered to be provine, cannot of its owne nature *per se* inferre treasone, nor doe any of the arguments urged meit this case at all, and the same is so contrair to the constant practice of this and all other nations in the cases represented, that this proposition can bear no debate, for that all convocatione ar by the fourt act first sessione first parliament of king Charles the second, treasone is a mistake, contrair to evry word of the act in relatione to our case, for that act does not speake at all of convocations and meittings, but of convocations, assemblies and councils, and the excepting ordinary judgments, as well as the acts of parliament to which that act relates, shoves that that act is only as to conventiones for trealing, consulting and determining in maters of state, nor does the act of parliament anent burrialls and baptismes, restrict the number at all; for tho' ten thousand meat at a burriall it were no treason at all, and that act is only against the expense and not the convocatione, and ther is nothing more ordinar in our style, evine before the criminall court and councill, then to lybell convocationes in armes, but as ane aggravatione off ane cryme in *suo genere*, nor was Assint forfaulted for his convocatione, tho' it be acknowledged that he hade four hundred men, and that driviling was provine but *tanquam crimen in suo genere*, and the former debate is opponed wherin the circumstances offred to be provine, take fullie off any possible guilt, so that it could never be once a cryme, and consequently all that is debated against protestations meet not the case at all. As to *alibi*, the knowne principall needs not be againe debated, for, by the law of all nations, *alibi* is a sufficient defence wher it is circumstantial, *et certo loco et tempore*, as heir, viz. That upon the Friday, from morning till night, at the least from ten in the morning till eight at night, William Cadwell was at a tryst or marriage, at Beith, three myles distant, evry hour and moment, and — Pattersone was working at a coall hugh, a myle or two distant, all that tyme, and that the other William Cadwell was herding kyne two myles distant all that day, evry hour therof, *per tempus continuum*, so that it was naturallie he could be ther.

The debate urging that they were not heritors, yet tho' becomeing so *ex post facto*, or that they need not prove them to be heritor, and that the renunciation is not sufficient, is so absurd, that it needs no consideratione, for all being indemnified in 1679, except heritors who were actuallie in the rebellione, it is this qualitie of being heritors then that inferre the guilt 'et qualitas per quod crimen inducitur probari debet;' and it has been the constant and reasonable custome of this court, that either the king's advocat produced a seasine to prove the pannalls were heritors, or otherwayes a renunciatione off all they hade at that tyme was still sustained, and this is uncontraverted

VOL. XII.

law; so the king cannot be prejudged, for it may easily be prevented by extracting the seasine; nor is it pretendit, that iff they can be provine to be heritors that a renunciatione is sufficient to assolzie them. As to what is replied against the forfaulting of the heirs, the defenders procourators, upon the constant and uncontraverted styll which in all courts, and especiallie in this, cannot be transgressed; and the style in such cases is, that the act of parliament of king James the fyfth, sixt parliament, and first act for forfaulting the aires efter death is lybelld, and it is subsumed that such a man comitted treasone, and having lands, heretages, it is just that his aires should be cited to hear and see forfaultur led and deduced against them, and the names of the aires relict and nearest off kine ar condescendit upon, but nothing of all this is done hear, and a conclusion cannot suplie the premisses of a sumonds that has a specifick style, especiallie wher the conclusion itself is blank to this day, and wher instruments is taken upon the blank sumonds, for why should ther be a blank in the sumonds if it be not to be filled up? or why should ther be a warrand for citeing any bodie, if they be not to be filled up in that warrand? or why should ther be executions iff ther names be not transferred from the executions to the sumonds? for the citation can signifie nothing, except ther be a warrand, and therfor our lawe ordaines blanks to be filled up, and iff a mane wer persewing ane appeirand aire in any court, the sumons against behoved to be filled up, but when this is joyned with the whole tenor of the sumonds, wanting propositione and subsumptione, it is denyable that this sumonds can be no warrand, for this process and the sumonds have been sustained without this, yet it can never be shoven that this was proponed and repelled, and the deceast Love cannot be proceedit against to be forfaulted, because he has three daughters who ar minors and nearest of kine, and would be his executors and *heredes in movilibus*, and consequentlie should be called, since his moveables will fall as well as his heritages.

Sir David Thoirs adds, That the sumonds is opponed wherein the hail defenders ar only lybelled against designed as Commons, and not as heritors.

2. The act of indemnity 1679, is opponed, wherby all persons in generall ar indemnified except heritors, and so the pannalls being secured by the generall indemnitie, the reply proponed ther against beareing that they fall under the exception from that act most be provine, and this being the only pretence, wherby my lord advocat pretends to seclud them from the benefit of his majestie's generall indemnitie, he ought to prove it, and, unlesse the same be instantlie provine, the pannalls ar undoubtedlie secure by the generall act; nether is ther any lawe that cane obleidge the pannalls aither to acknowledge themselves heritors or to grant dispositions, the doeing

2 N

either wherof being as much as to force the pannalls to prove the indytment against themselves; and my lord advocat's pretence that the pannalls have no prejudice, albeit they were forfaulted as heritors, is most relivant, because the doome and sentance should passe against them as such, not only is ther, and ther, and ther posterities blood tainted, but ther lives ar in the king's hands, and the most aither be execute or continew in prisone till they gott a remissione.—His majestie's advocat adds, that as to the exculpatione, none of the witnesses therein can be admitted, because he opens the executione in the proces bearing that the copies were given to the haill witnesses and the king's advocat upon the last day of Aprill, the second and third days of May, without distinguishing the particular dayes upon which they were cited, and *de facto* the copie given to the advocat was upon the last dayes of it, however that being upon 15 days or compitent tyme upon which the advocat might have taken off the habillis off the wittnesses, and raised dilligence for that effect, conforme to the expresse tenor off the act of regulatione, the citatione cannot be regairdit, and therefore alleadgit the exculpation could be sustained, it can only be provine by the persewers wittnesses.

Sir George M'Kenzie answers, that by the article of the regulatione proponed upon ther is no tyme limited, apointing that the king's advocat shall gett lists of the witnesses in the exculpatione, and consequentlie ther being no act of parliament to put the leidges in *mala fide*, the exculpatione, which is *jure natura*, and the self-defence, cannot be taken from them. By the twentie-nynth act, first parliament off king James the seventh, it is declared, that pannalls for treasons may be cited upon twentie-four hours or fourtie-aught houres wher they ar in prisone, but so it is thir pannalls being now in prisone it is sufficient for them to have given copies of ther exculpatione upon fourtie-aught houres, the paritie of reasone and rule of equitie beareing the same, that whatever may be against a pannall may be lykwayes for him, and not only ar they in prisone now but were in prisone, and came upon caution given to my lord Glassfoord for 20,000*l*.

Sir Patrick Hume — As to that pairt off the debaite anent, not citing the nearest of kine to Umquhil, John Love adds, That John Love the eldest sone of the deceast John Love, is called, and compeiring who is the only *legitimus contradictor* in this case, seeing he as the eldest sone was to enjoy his father's estate, and the king's advocat was not obleidged to call any other but for farder securitie, the relict and children ar also called.

The Lords Justice Generall, Justice Clerk, and Commissioners of Justiciary, having considered the lybell persewed by his majestie's advocat against John Love, and the other pannalls, finds that dureing the rebellione the pannalls did randevouze, modell themselves

in military forme and fear of weir, and drivelled and exercised themselves as soul-diours doe att Middeltoune-hill, the week befor Bothwell-bridge, relivant to inferre the paine and cryme off treasons. And sustaines the defence that the pannalls meitting was accidentall and to hear the king's proclamation read, and that they cryed, God save the king! and declared they would never joyne with the rebels, but would be readie to feight for the king when called, and that they were breeding themselves sojores the king, and that they stayed together for a fewe hours, and efter the reading of the proclamatione, and did separat and went home to ther owne houses relivant to elid the dittay.

The lords finds it relivant *separatim*, that the pannalls, the tyme off the randevouze, declared ther resolutione to joyne with the rebels at Bothwell-bridge, or that money was collected at that tyme frae the pannalls to be sent to the rebels to inferr the paine lybelled.

And as to the defence of *alibi*, though it be receavable in the case of treasons, yet as it is preponed and circumstantiat in this case, the lords repell the samen.

As to the defence that severall of the pannalls wer not heritors the tyme off the rebellion, the lords find the samen relivant, the pannalls renuncing all lands and heretages belonging to them, the tyme off the committing the cryme lybelled, in favours of the king and his donator, unlesse his majestie's advocat prove them to be heritors.

The lords sustaines the executiones of the exculpatione, but prejudice to his majestie's advocat to have a farder dyet in case he requyres the samen to prove objections against the pannalls witnesses. And also having considered that pairt off the lybell and debate anent the pannalls harbouring, recepting and converseing with James Nivin, in Beltrees, and — Love, in Cadwells, and that ther is nether moneth nor year lybelled, finds the samen not relivantly lybelled, and repells the haill remnant defences proponed for the pannalls.

Dyet continewed till next day, 5th May, 1687.

Intran,

John Love, younger, in Little Gavan; John Kings, elder and younger, in Meikle Gavan; Alexander Clerk, ther; William Cadwell, ther; Umphray Barber, in Risk; John Cadwell, ther; William Orre, ther; John Pattiesone, elder, in Lochsyde; John Cadwell, in Hall of Beltrees; John Orre, in Beltrees; Thomas Cadwell, ther; William Cadwell, in Glendarloch; Andrew Robiesone, in Trees; Robert Orre, in Beltreemuir; William Cadwell, in Brunthills; David Smith, in Glenhead; Robert Ker, ther; Robert Orr, in Beltrees; James Robiesone, in Wardzet.

The deceast,* John Love, in Littell Gavan, elder, his eldest sone present for him.

* For proceedings against dead people, see vol. 11, p. 1030.

Indyted and accused *ut in die precedente*.

The interloquitor anent the lybell persewed against the forenamed persons, being this day read, the same was remitted to the knowledge of ane assyse.

ASSISA.

Henry Hoome, of Peppermilne.

James Murray, of Skirline.

James Oswald, of Spittle.

Mr. Alex. Paterson, of Caverhill.

James Currie, late provist of Edinburgh.

Thomas Smith, brewer.

John Browne, merchant.

Charles Jack, merchant.

Alexander Vanse, vintiner.

John Robertson, taylor.

George Maxwell, perivick-maker.

Lawrence M'Leran, merchant.

James Edmistoune, merchant.

William Hensone, vintner.

Alexander Fergusone, merchant.

The assyse lawfully sworne, no objection of law in the contrair.

His *Majestie's Advocat* for probatione aduces the witnesses efter deponing.

Sir *George M'Kenzie* contends, that the witnesses depositions being formerly taken, they must be reteired and cancelled befor the witnesses depone in presence off the inquest.

His *Majestie's Advocat* answers, that the depositions of the witnesses being taken befor the commissioners apoynted by the councill, and, upon report, the councill did advyse the depositions, and remitted the pannalls to the justices, they cannot be produced.

The lords ordaines his majestie's advocat or my lord Glasfurd, donator to the pannalls for-faultures and escheat, to produce ther depositions alreadie taken, that they may be cancelled before the witnesses * depone.

* "After being questioned *in initialibus*, and before giving his evidence on the case, the witness, if he please, may call for his declaration, or deposition if he has been examined on oath, and have it cancelled in his presence, that he may be at absolute freedom in telling his story on the trial. This was done in the trial of Love and others for treason, May 4th, 1687, where the privy council had examined several witnesses upon oath. But even if the declaration should not be cancelled, yet certainly it can never be employed in any manner of way to the prejudice of the witness; nor can it even be produced in the trial, to discredit his evidence, by shewing that on a former occasion he had given a different account of the fact. Still less in the ordinary case, will verbal testimony to that effect be received, to impeach the credit of his oath. [It was once attempted to found a charge of perjury against a witness upon his oath in the trial, compared with his declaration; but this prosecution was abandoned after an order for lodging informations on the relevancy of the charge. Maccurley's case, 1777.] Hume's Commentaries, vol. 2, p. 192.

Sir *David Thoirs* objects for the pannalls, that Henry Adame cannot be received as a witness, because, 1. he is frequently furious and bound.

2. In his pretendit lucid intervalls, he is altogether graceless and debauchit, drinks the Divill's good health, and boasts that all the Three Persons off the Trinitie will have enough adoe to save him.

3. That he was active in the persuit in apprehending and threatning of the other witnesses, and shooting a gune in at ther windows in the night, a purpose to terrifie and affright them; all which shall be comonly and instantly provine be witnesses.

4. Reffers to my lord Glassfurd's oath, that since he gott the att and warrand for precognitione from the councill, he has frequently intertained him in his house, or givine him good deed, at least appoynted and allowed others to give him the same.

Sir *Patrick Hume* answers, That notwithstanding of the objection, the witness ought to be received, because in so farr as it alleadged he is frequently furious, it is now evident that he is sane mentis, and albeit he hade been any tymes furrious, which is denyed, yet any persone in his delucid intervalls as he, may grant right and doe other deeds which may be sustained in, so he may be admitted a witness.

As to the second, it is answered, that he is not convict off any crime, the objection is not relivant against him, and it is absolutly false and calumnious.

As to the third, the same is not relivant, unlesse it were offred to be provine, that my lord Glassfurd made use of him since the intenting of the proces.

To the fourth, it is absolutly denyed, that my lord Glassfurd did intertaine him as a servant in his house, and albeit he hade given him any thing for his maintenance, that is not relivant to object him as a witness; and as to any objection that relates to the witnesses, so *inhabiliundo* can only be provine by the witness's owne oath, and not by other witness; but any thing that is lybelled against this witness, is nether relivant nor true, and therefore he should be received.

Sir *George Mac Kenzie* replies, that these are clear and distinct principles in the lawe, that *sana mens* is presumed till *furor* be provine, but efter *furor* is once provine, it is presumed to continew, and to have infected the judgment, and therefore he who uses that witness, or getts a contract from him, must prove his lucid intervale, and the lucid intervall must be provine in the tyme the contract was entered into, and the act to be provine was subject to sense, and so he must be provine to be in a lucid intervale the tyme of Middletoun-hill, for then he was to understand what was doeing, and even tho' he could only be taken *cum notâ*, because that weakens the judgment.

To the second replies, the fundatione off credibility of a witness is his sense of a dietie

and a feare and dread off it, *numinis reverentia*, and therfor whatever taks off this casts a wittnes, and nothing cane doe this more then the acts and words condescendit upon, and what iff he hade done it within this hour could he be receaved because ther was not a sentance, and the reasone why a sentance is requisit in some cases, such as theft and others, is because it is presumed the pairties injured would have presumed, but as to that act and expression ther was no persone interested, and so ther could be no persuit; and tho it be farder objected against the wittnes that he is a constant theiffe,* and ther could be no persuite

* Mr. Hume, in his "Commentaries respecting Trial for Crimes," (vol. 2, p. 154,) says, "A third ground of disqualification of a witness, is infamy of character; a just cause of exclusion certainly, if it be of the due degree, and be established in a regular and satisfactory way. And in these points our judges seem always to have been observant of the proper caution and reserve. To allow a summary impeachment of the character of any witness, in the course of the trial, or to sustain any, even the strongest, testimony of a general nature against him, as a bad or immoral person, is held in our practice to be an improper, and, indeed, an unfair proceeding, with respect equally to the prosecutor and the witness: to the prosecutor, who cannot be prepared with evidence on his part to obviate such aspersions, which may be utterly groundless; and to the witness, who, according to this course of inquisition, might, without any warning of the challenge, or any opportunity of vindicating himself, suffer a material injury in his fame: not to mention the intolerable length of such inquiries, and the rashness, lubricity, and uncertainty so incident to all general testimony respecting matters of this sort, and the boundless field which such investigations lay open to the indulgence of evil passions. For these reasons, our judges uniformly refuse to listen to any general challenge, how strongly soever it may be expressed, of the character of a witness, as a dissolute, or immoral, or unprincipled person. Of which rule suffice it to cite one testimony, August 12th, 1765,"—[The only judgment of an opposite tendency that I have met with, is in the trial of Love and others, for treason; where the lords allowed a proof of this, among other objections, to Henry Adam, that he is graceless and debauched, drinks the devil's health, and boasts that all the Three Persons of the Trinity will have enough to do to save him. After proof, he was admitted *cum nota*, May 4th, 1687. It has been made a question whether the common executioner is such person as may be a witness; and Mackenzie, Part 2, Tit. 31, No. 7, says, that he had known the lords of session refuse him. But I observe that he was admitted in the trial of John Pringle for theft; June 20th, 1715,]—"which occurred in the noted trial of Nairne and

against him therfore because off the skaith was repayed.

As to the wittness his goeing up and downe showeing himself concerned in apprehending and threatning wittnesses, this takes off the disinterestednes that should be in a wittness, and being *facti* is probable by wittness, and it is verie absurd and contrair to the light of nature as weell as the opinione off lawyers, that the fault and maleversatione of a wittnes should be purged by his owne oath, for the objectione against him is and heir ther is no perjurie as wittness, and wittness should be *omni exceptione majores* in crymes.

Ogilvie, for the crimes of murder and incest. It was objected to Anne Clark, one of the chief witnesses for the crown, that she was a person of evil fame, a notorious liar and dissembler, a known sower of dissension in families, and a common whore, who had lived for years in a bawdy-house. But to none of these reproaches did the court pay any regard; though to a certain extent they had consideration of some other charges, which were made on the same occasion.

"Not only is this our rule; but the panel shall not much strengthen his objection, though he drop those general imputations of evil fame, and offer immediate proof, by testimony, of infamous crimes committed by the witness. The prosecutor is not to lose his evidence, but on sure and satisfactory grounds; and the witness is not to be *made* infamous in this trial, on a summary, unexpected, and *ex parte* inquiry: he must be shown to be already infamous, by his conviction in course of law, of some crime inferring infamy, after a trial where there was equal opportunity of establishing his innocence as his guilt. This has been the settled rule of our practice, if not from the earliest times, at least ever since that period when things were brought into a more improved order, through the new establishment in 1671. In the trial of Love and others for treason, the pannels excepted to Henry Adam, for several reasons, and especially because he was a thief. But the lords gave this interlocutor: 'And as to the objectione anent the witness his being a theiffe, the lords repell the same, in respect he was never convict thereof.' In February, 1775, Margaret Fairlie being prosecuted in an inferior court, for instigating certain boys to steal, offered a bill of advocation on this among other grounds, that the charge was meant to be proved by the testimony of the very boys, who were mentioned in the libel as guilty of the acts of theft, and who, on this trial at least, must be held for infamous and unworthy of credit. The lords refused the bill of advocation. In the trial of Bruce and Falconer, for breaking into the office of the Dundee Bank, and afterwards in the trial of Dick for the same offence, August 13th and November 24th, 1788, it was strenuously objected to Alexander Macdonald, (who indeed was soon after convicted

Sir Patrick Hume duplyes to the first, that evry mane is presumed to be *sanae mentis*, and the wittnes being now present is of a most stayed and composed judgment, and cannot be rejected, unlesse it were offred to be provine that he was furrious all the tyme that the de-

of forgery) that he was a dishonest and infamous person, and had been guilty of several acts of theft; whereof immediate evidence was offered to be given. But here too, as in all former cases of the like kind, the lords sustained the answer, that no conviction of these crimes was on record against the man, and that he could not be convicted of them at this time, nor in this summary fashion.

“Farther still; it is not even on every trial and conviction of a crime that our judges have such entire reliance, as to allow it the power of affixing infamy to the convict, and casting him out of the number of citizens who are to be credited on oath in a court of justice. In general, this high power is not to be ascribed to a conviction before those inferior magistrates, such as justices of the peace, and magistrates of burghs, who are not supposed to be so conversant in legal proceedings, and are in the use of trying summarily themselves alone, without calling the assistance of a jury. Though still the lords will not entirely disregard a conviction of this less solemn kind; but, allowing the witness to be received, will reserve its effect as to his credibility, or the degree of faith which his evidence shall have a claim to with the assize.”

I have found in the Records of Justiciary, the following recent Case involving this point:

EDINBURGH, 7th JANUARY, 1808. IN THE TRIAL OF DANIEL M'PHERSON, AND OTHERS, FOR THE CRIME OF MURDER.

“Peter or Patrick Skinner, labourer, or late labourer in Aberdeen, being called as a witness,

“Murray, for the pannalls, objected to the evidence of this witness, that he had been convicted of theft, by sentence of the baillies of Aberdeen, set on the pillory, and banished from that city; and that having returned from his banishment, notwithstanding that sentence, he had afterwards been whipped through the town. In support of this objection, extracts from the records of the burgh of Aberdeen were produced. It was maintained on the part of the pannalls, that there could be no doubt that the crime of which Skinner had been convicted subjected him to *infamia juris*, and upon this point the authorities of Dirleton, fo. ed. p. 224; Stair, b. 4, tit. 43, s. 7; Mack, fo. ed. p. 2, tit. 26, s. 6; Bankton, b. 4, tit. 30, s. 4; and Erskine, b. 4, tit. 2, s. 23; as also the decisions pronounced by the court of session in the cases of lady Milnetoun, 21 January, 1671; and Taylor, 26 February, 1709, Fountainhall, were referred to. The question came therefore to be, whether this conviction, ascertained by the judgment of a court of record, was to be re-

fenders did meitt and randevouze at Middletoune, which is not so much as pretendit, and many tymes a man when he is in drink, or by other accidentalls, may be furrious at a tyme, and yet it were absurd that that man at no tyme should be received as a wittnes.

ceived as an objection to the admissibility of the witness, or merely to his credibility; and in answer to the argument of the counsel for the crown, that it was only a conviction proceeding on the verdict of a jury, that could render a witness inadmissible, it was submitted to the court, that no such doctrine was recognized in any of the decisions or authorities upon the law of Scotland, with the exception of Mr. Hume, a recent authoritie upon the subject. It was admitted, that where the sentence was not pronounced by a court of record, their conviction could only be proved in the same manner as any other matter of fact; but the conviction of a court of record, ascertained the fact in the best possible manner; and the guilt and conviction, being thus ascertained, the legal consequences must follow from it. It was objected, that with regard to the three cases referred to, in answer to the objection, the sentences had been pronounced, the one by the baillies of Alloa, the other in the Gorbals of Glasgow, and the third by the justices of the peace of Stirlingshyre, that the court, in none of these cases, had the judgment of a court of record before them, and therefore could not determine this point. The only case in point, which Mr. Hume states, was the trial of Walter Ross, which he admits proceeded on a contrary principle, and there William Boyd, who had been banished 15 March, 1786, by the sheriff of Mid-Lothian, without the verdict of a jury, on account of theft, was rejected as a witness. This was a case perfectly in point, and was not disputed, that the burgh of Aberdeen had a grant of sheriffdom from the crown, and stood in that respect upon the same footing as the sheriff court of Mid-Lothian. This was the only case in which the point had been determined, and it was there found that the judgment of a court of record might be produced as establishing *infamia juris*, although it had not proceeded upon the verdict of a jury.

“Macenochie, for the prosecutor, answered, that it was quite unnecessary to do more than refer their lordships to the numerous train of decisions with which they were all acquainted, occurring daily both in the supreme court and upon the circuits, by which it was now as irreversibly fixed as any point in the criminal law of Scotland, that no conviction of an offence, unless proceeding on the verdict of a jury, created an *infamia juris*. It is no doubt true, that to this rule there may be one exception, viz. the case of a conviction before the court of session; but the reason of this was obviously that the court itself, from its great numbers, was considered in the same light as a jury, and therefore in truth the principle which regulated the one case seemed to regulate the other.

2. It is a principle in law, that unlesse a mane be convict off a cryme which inferr infame the of a cryme against him is not sufficient, for, iff that were allowed, then ther is few wittnesses could be allowed to be receaved, for the pairtie would alwayes object some cryme or other against him, and the reasone why a wittnes cannot be rejected upon objecting a pretendit crime against him, is, because iff he were persewed he has his legall defences, which would liberat him from the crymes objected, which, in this case, is not competent to him, he not being in a proces, and therefore the lawe has justlie determined, that albeit the cryme wer never so hynous that is objected against a wittnes, it cannot inva-

With respect to the distinction which was attempted between courts of record and others, none such was known in the law of Scotland, and it would be of the most mischievous tendency to give that effect which was contended for to the sentences of inferior magistrates, whether sitting in a court which kept a record or did not keep a record. The police of the country required that inferior magistrates should punish petty offences, but the extent of the punishment which they could inflict was extremely limited, and there could no great hardship arise to the individual who was tried from this exercise of power, because if aggrieved he had the remedy of a suspension: but it would evidently be attended with the greatest hardship if such sentences were to be followed with infamy for life, or to have any high and lasting effect, such as that which was now contended for, and which, therefore, neither the principle nor the practice of the law has allowed to them. It was therefore trusted their lordships would repel the objection.

"The Lord Justice Clerk and Lords Commissioners of Justiciary, having considered the foregoing objection with the answer thereto, and heard parties procurators fully thereon, they repel the objection, and allow the witness to be examined, reserving the consideration of his credibility to the jury.

(Signed) "C. HOPE, I. P. D."

"The witness was then examined."

After all, there is some appearance of incongruity in entrusting legal jurisdiction of offences to magistrates who are not presumed to know what the law is. With respect to the competency, according to the law of England, of witnesses as affected by the different objections noticed in this Case, see Peake's Compendium of the Law of Evidence, cap. 3; Selwin's Abridgment of the Law of Nisi Prius, cap. 8, s. 3, cap. 10, s. 3, cap. 22, s. 3, cap. 28, s. 2; and the Case of Christopher Saville, mentioned in the same work, pp. 680, 884. See also East's Pleas of the Crown, cap. 10, s. 3, s. 5, s. 6; and the Cases of Coghlan v. Williamson, Douglas, 93; and of lord Audley, vol. 3, p. 401, of this Collection.

lidat his testimony or reject him from being a wittness unlesse there were actuallie a sentence against him by a compitent judge, finding him guilty off a cryme that inferrs infamie.

3. It is lykwayes a certaine rule in lawe and the constant practise, that the objections *contra* persons testimonys only probable by his owne oath, such as iff he be a servant, a moveable tenent, craved good deed, &c. which objectiones ar never allowed to be provine by other wittnesses, for, iff that were allowed, then the objectiones against the wittnesses would just resolve in a newe proces, and so ther could never be an end off such actiones.

Sir David Thoires objects, that Robert Blaire cannot be received a wittnes, because it is offered to be provine by his owne nearest relationes, and others above exceptiones, that he was borne ane idiot, and has been holden and repete as such ever since, and to this verrie hour.

2. That he is not worth the king's unlawe, and is knowen to be a constant begger, begging up and down the countrey.

3. That he was *alibi* at least a myle's distance from Middeltoune-hill the tyme lybelled.

4. That since the citatione declared he knew nothing of this affair, except what Andrew Howe bade told him and bidden him say, and that he behoved to tell what Andrew Howe bade him. My lord advocat answers to the first, that the wittnes being ane idiot or off that weaknes, that he is incapable to be a wittnes, falls under the observatione of the lords, who in takeing his depositione will be able to observe his sufficiencie or want of judgment.

It is answered to the second, that his being not worth the king's unlawe, a beggar cane only be provine by his owne oath.

As to the *alibi* a myle's distance is not relivant, and three myles distance was repelled by the lords to the parties.

As to the fourth, it can only be provine by his owne oath, and the lords may examine him.

In generall it is answered as to both the wittnesses, that as the objectione off a cryme which is not staited nor instructed by a sentence is not relivant in generall, otherwayes one proces would be includit in ane other, so in cases of treasone *famosi et impuberes* are eavil wittnesses, so that no objectione of a cryme, tho' it wer establised by a sentence, and even the being of a rebell perjured, does not att all barr a persone from being a wittnes in this privileged cryme.

The lords having considered the objections against Henry Adame, as to his being often furrious, and as to his drinking the divill's health wher he was in lucid intervalls, and contemning the Persons off the Trinitie, and as to his being active in the persuit in apprehending and threattning the witnesses, and shooting a gune at ther windowes, they ordaine the wittness for proving these objections to be

examined befor the lords, befor they determine upon the relivancie of these poynts to cast the wittnes; and as to the objectione anent the wittnes his being a thieffe, the lords repell the same in respect he was never convict theroff.

As to the second wittnes, the lords ar to examine himself and wittnes his idiotrie, and to take his oath anent, his being worth the king's unlawe, and to examine wittnesses if he hade been ane ordinary commone beggar receiving charitie.

EDINBURGH, May the fufth, 1687.

John Adam, brother to Henry Adam, being examined upon the objectione of furriositie, proponed against his brother, and solemnlie sworne in presence of the justices and assysers, and purged, depons, that about four years since, he knewe the said Henry Adam, his brother, to be furrious and madd, and twice bound in one half year, and that he has seen him rune up and downe the countrey, and ryve and throw away his cloathes, and kill his father's cattell, and offer to burne his house: depons, that befor Bothwell-bridge, he was not in his right eliment, and that he used to ryve his cloathes and sinesyne; and this is the truth as he shall answer to God.

Sic Subscribitur,

JOHN ADAME.

LINLITHGOW, I. P. D.

William Adam, brother to Henry Adam, aged twentie-six yeares, purged and sworne, depons, that three years and ane half ago he saw his brother, Henry Adam, furrious and madd, so that he was necessitat to be bound, depons, that ever since he was eight year old, he could never beleive a word he said, aither before or sinesyne, except what he sawe; and this is the truth as he shall answer to God.

Sic Subscribitur,

WILLIAM ADAM.

James Guthrie, macer, being solemnlie sworne and purged, depons, *nihil novit*.

John Clerk, in Muirdyks, being solemnlie sworne and purged, depons, that he did hear Henry Adam, the wittnes, drink the king's health.

Sic Subscribitur,

LINLITHGOW.

John Smith, in Wattiestoune, purged and sworne, depons, that Henry Adam, the wittnes, was with the pairtie that came to apprehend him as a wittnes in this proces.

Sic Subscribitur,

LINLITHGOW, I. P. D.

EDINBURGH, the 5th of May, 1687.

John Adam, father to Henry Adam, being solemnlie sworne and purged upon the objectiones against his sone, depons that Henry Adam his sone has been furrious and bound since Bothwell-bridge, about four years since; depons that he never hade him to bind before that, but he never did his duty in keeping the kyne, and doeing what he commandit him; depons, he was bound only once since Bothwell-bridge, and that he was kept bound for two

dayes, and that for half a year's tyme he was worse and better, and that he rune naked through the countrey and threwe away his cloathes, so as they were necessitat to apprehend and take him; depons, he cannot wreitt.

John Adam, brother to Henry Adam, the wittnes, being sworne and purged, depons, that about four year since he knewe his brother to be furrious and madd, and twice bound, and that he has rune up and downe the countrey, and torne and throwen away his cloathes and killed his father's cattell, and offred to burne his house; and depons that befor Bothwell-bridge he was not in his right eliment, and that he used to ryve his cloathes; and this is the truth as he shall answer to God.

John King, in New Mylne, being solemnlie sworne and purged, depons, that he is cousing german to Robert Orr and John King the pannalls.

Sic Subscribitur,

LINLITHGOW.

John Fleyming, in Mylne, of Beith, purged and sworne, depons, that on a Sunday morning, Henry Adam came to the deponent's house in company with John Howe, in Damtoun, and asked for John and James Swans, two off the witnesses, if they were ther, and that he hade a carrabine on his shoulder, and presented her or held her out, and said, iff he gott not them he would send them to the kaill: depons, Adam said he hade my lord Glasford's order to search for them, and that he would have them if they were out of hell; depons, he cannot wreitt; and this is the truth, as he shall answer to God.

Robert Fleyming, in Mylne, of Beith, sworne, purged and examined, depons, conforme *precedente in omnibus*; and this is the truth, as he shall answer to God.

Sic Subscribitur,

ROBERT FLEYMING.

Robert Knox, in Beith, sworne and purged, depons, that he saw Henry Adame at the kirktowne of Beith, with a long gune, and that he was asking for the Swans, the wittneysses, and said that he was come from the lord Glasfurd to apprehend them, and that they should be apprehendit iff they were out of hell, and that pairties were sent to severall places to apprehend them; and this is the truth, as he shall answer to God.

Sic Subscribitur,

ROBERT KNOX.

Ffollowes the witnesses for proveing Blaires idiotrie.

Hugh Blair, in Beith, being solemnlie sworne and purged, depons *nihil novit*.

John Fleyming, in Mylne, of Beith, solemnlie sworne, depons *nihil novit*.

Robert Semple, in Balgreine, being solemnlie sworne, depons Blair, the wittness, herds kyne in sumer, and seeks charitie in the winter.

Andrew Kirkwood, in Foolwoodhead, purged and sworne, depons conforme to Robert Semple,

and adds that Blair, the wittnes, could not buy hosse or shoes to himself tho' money were given him. LINLITHGOW.

Robert Fleyming, in Mylne, of Beath, purged and sworne, depons Blair, the wittness, herds kyne in the sumer, and seeks charitie in the winter.

The lords haveing examined wittness anent, proving the objectiones against Henry Adam, they allow him to be receaved a wittness *cum notá*.

The lords haveing examined witnesses anent, proving the objections against Blair, the wittnes, and having questioned and examined Blair himself, they allow him, and admitts him to be receaved a witness.* LINLITHGOW.

The lords having examined William Carruth, ane off the witnesses, and finding by his depositione that he was not twelve yeares of age the tyme off the committing the crymes lybelled, they repell him from being a wittnes.

Sic Subscribitur, WM. CARRUTH.
LINLITHGOW.†

* Mr. Hume, in his "Commentaries respecting Trial for Crimes," says, (vol. 2, p. 137), "There is a disqualification from defect of intelligence, on which ground are excluded all persons bereft of reason, whether idiots or furious persons, if they are either constantly in this condition, or are subject to such frequent returns of their malady, and at such short intervals, that they cannot safely be relied on. In regard to him who has only at times been deranged, but at long intervals, it seems probable that his testimony may be taken, at least *cum notá*, concerning any matter which has fallen under his observation in his season of sound health, more especially if it be a recent matter, provided always that no fit of derangement has succeeded; for if the fact be otherwise, certainly he is not receivable at all. In the trial of Love and others for treason, May 4th, 1687, it was objected, *inter alia*, to Robert Blair, that he was born and had always continued and been reputed, a natural fool; and on this head the court proceeded to take evidence, by the examination of witnesses, and of the man himself; but in the end his testimony was allowed. In the same trial, it was objected to Henry Adam, and, along with other matters, was admitted to proof, that he was frequently furious, and had sometimes been confined and bound on account of his disorder. But it appeared, that it was at least four years since he was in any such condition, and he was received in consequence *cum notá*."

† Mr. Hume, in his "Commentaries respecting Trial for Crimes," (vol. 2, p. 138,) says: "Persons are deficient in intelligence, owing also to immaturity of years, which grounds an objection to them in a double point of view: as they may be liable to misapprehension of facts; and still more, as they may not be sufficiently confirmed in their attachment to truth, or their sense of the obligation

May 6, 1687.

Intran,

John Love; younger, in Littell Gavan; John King, elder, in Meikle Gavan; John King, younger, ther; Alexander Clerk, ther; William Cadweell, ther; Umphray Barbour, in Risk; John Cadweell, ther; William Orr, ther; John Pattersone, elder, in Lochsyde; John Cadweell, in Hall, of Beltrees; John Orre, in Beltrees; Thomas Cadweell, ther; William Cadwell, in Glendarloch; Andrew Robiesone, in Trees; Robert Orre, in Beltree-muir; William Cadweell, in Brunthills; David Smith, in Glenhead; Robert King, ther; Rob. Orre, in Beltrees; James Robiesone, in Wardzet.

The deceast John Love, elder, in Littell Gavan, his eldest son, present.

Indyted and accused for the treasonable crymes mentioned in the dittay, *ut in die præcedenti*.

His *Majestie's Advocat* craves, conforme to the lords interloquitor, that the paunalls may

of an oath. Mackenzie is of opinion, part 2, tit. 26, No. 5, that, for these reasons, a minor is not to be received in any case, unless he be past fourteen years of age; and that with respect to certain matters, not so easy to be understood, even a greater maturity of years shall be required. That at fourteen, a person is ordinarily receivable as a witness, may be shown from many instances on record: as in the trial of Alexander Cunningham for fire-raising, July 30th, 1677, where James Swan was admitted, with respect to whom the prosecutor alleged no more than that he was fourteen; and in the trial of Carmichael, January 15th, 1700, a schoolmaster, where James Ewart was admitted, who was fourteen on the 5th of Nov. preceding the trial; and in the trial of Stewart Abercrombie, Feb. 7th, 1718, where Henry Finlay, a boy of fourteen, was in like manner received. But that there is an absolute and invariable rule, which excludes every one who is under these years, how simple soever the fact in question; and although the individual appear to be competently instructed in the nature, and duly impressed with the reverence of an oath, this cannot so readily be yielded: not only because such a rule seems neither to be convenient nor reasonable in itself, but also on account of the precedents which may be quoted against it. In the trial of Charles Fallon, August 10th, 1775, for a rape, alleged to have been committed on a damsel hardly arrived at woman's estate, the following persons, her school-fellows, were received and sworn without objection: namely, Betty Tweedale, aged fourteen and some months; Mary Sneddon, aged thirteen, and going fourteen; Bell Innes, aged thirteen; Janet Blaikie, aged twelve, and going thirteen. More lately, in the trial of Daniel Mackay, a servant of the Post-office, July 9th, 1781, for stealing bank-notes from a

renounce or else goe to the knowledge of ane inquest, and the pannalls being inquyred judicially iff they would renounce, and all refusing, except James Wilson, the lords ordaines them all to passe to the knowledge off the inquest, except the said James, who is to remaine prisoner till he renounce in the terms of the former interlocutor.

His *Majestie's Advocat* for probation, aduced the witnesses efter deponeing, viz.

Robert Blair, servitor to Andrew How, of —, aged threttie-six years, unmarried, purged and sworne, and admitted a witnes, depons, that some fewe dayes befor the defate of Bothwell-bridge, being the week befor immediately, he did see John Love, elder, in Little Gavan; John Kings, elder and younger, in Meikle Gavan; John Cadweell, in Risk; David Smith, in Glenhead; with about threttie people in haille, convocat and met together, at Midletowne-hill, in the parroch of Lochquhinock, when the rebels were in armes at Bothwell-bridge, and that amongst these threttie, most of them were heirds and boyes, some of sixteen, some of fourteine, some of twelve, and some of ten yeares of age; and that he did see

packet, Margaret Yule, aged thirteen, was admitted to prove, that, by order of the pannel, she had carried one of the bank-notes to a shop, to be there turned into cash. I have not, however, met with any instance of a person, male or female, being sworn as a witness, who was under twelve years of age.

“ Yet it is certain, on the other hand, that on special occasions, where, from the nature of the charge, persons of earlier years are necessary witnesses, and are capable also of understanding the matters in which there is need of their evidence, the court may and do take their examinations without an oath, ‘ut prosint ad veritatem indagandam;’ leaving it with the jury to put that degree of faith on their relation, to which, on weighing the matter and manner thereof, and all the circumstances of the situation, it shall justly seem entitled. This was done, Feb. 7th, 1688, in the trial of Philip Stansfield. (See it in this Collection, vol. 11, p. 1371), for the murder of his father. James Thompson, a boy of thirteen, and Anne Mark, a girl of ten years of age, were there examined in that way, (as the record expresses it) “for clearing the assize.” And again, July 24th, 1758, in the trial of Forbes, a school-master, for corrupting the morals of his pupils, two of these, viz. Isobel Alice and Isobel Goodwillie, gave their declarations on the trial, being under twelve years of age. The same course has sometimes been taken with persons of riper years, when, upon the whole case, the court have seen cause for declining to administer an oath. William Ranken, a boy of thirteen, was examined in this way, July 31st, 1738, on the trial of David Young for fire-raising; as was John Paterson, a boy between twelve and thirteen, August 1st, 1774, in the

VOL. XII.

Hugh Love upon ther head, and drawe them up, and that they were in rank and fyle, and that he was not so near as to hear any word off command, but he sawe them goe throwe other as iff they hade been playeing, but knowes not howe sojores ar drivelled; and that the deponent stayed but ane quartour of ane hour ther, dureing which tyme they continewed and were goeing throwe other when he left them; depons that amongst them he sawe one pyck, and the rest hade staves and runges, without iron, and was at such a distance, as he knowes not iff ther were swords amongst them, and that he heard one off them make a shott with a pistoll, but knowes not who it was, but as it is reported, it was James Wilsone; depons that he did not hear any off that number off threttie, nor from any amongst them that day, that they were to goe to Bothwell-bridge, and all that he heard off was that upon the day thereafter, John Fultoune, who was one off ther number, told the deponent that they were resolved to goe to Bothwell-bridge, and joyne with the rebels upon the Munday thereafter; and John Walker, ane herd boy, who was ther, told the lyke: being interogat iff John Love, elder, was amongst the rest

trial of John Reid for sheep-stealing, with respect to certain things which had happened when he was just turned of twelve.

“ As it thus appears, that the objection of non-age, at least in many instances, arises from the defect of instruction in the nature of an oath, rather than from any distrust of the minor's capacity to understand and relate what he has seen; so the rule on this head is to be taken from the age of the witness at the time of his examination, and not at the date of the facts of which he is to give an account. Perhaps, however, this remark ought to be accompanied with two restrictions. The facts must be of an obvious and simple nature, such as the witness might readily understand at the time he saw them; and farther, they must have happened at a period not very distant from the time of trial. For if it is otherwise, so great is the alteration which takes place in any one at this season of growing manhood, that we can hardly have reliance on the witness, how much soever he may be disposed to tell the truth, for a relation of things strictly conformable to his first impressions. It is true, that in the trial of Gavin Dunbar, July 12th, 1637, Alexander Miln, aged twenty two, was allowed to depone with regard to an act of murder, which happened (he says) when as yet he was ‘betwixt elevin and twelf yeiris of aidge;’ but this testimony, as the record expresses it, was taken ‘in retentis, per viam ‘inquisitionis tantummodò.’ In the case of Love and others, May 4th, 1687, (and as I presume for some such reason), the lords rejected William Carrith; he having been under twelve at the date of the facts libelled, which was upwards of seven years before the trial.”

goeing throwe other, depones negative, but that he was lyeing upon the syde of the hill looking to them; depones the randevouze was on a week day, aither the Tuesday or Wednesday befor the defate at Bothwell-bridge; depons he cannot wreitt.

Sic Subscribitur, LINLITHGOW.

James Swane, in Mylne, off Beith, aged 23 years, married, purged and sworne, depones, that some fewe dayes before the defate off Bothwell-bridge, the deponent did see John Love, elder, in Little Gavan; John Kings, elder and younger; Alexander Clerk, in Meikle Gavan; John Cadwell, in Risk; John Cadwell, in Hall, of Beltrees; David Smith, in Gleenhead, convocat and meit together at Middletoun-hill, in the parroach off Loquhinoch, when the rebels were in armes at Bothwell-bridge, and that meitting was the week befor the defate at Bothwell; and that they were about twentie in number, and that amongst them ther were more boyes than men, and that severalls of these boyes were about ten or twelve years of age; that he did not see any armes amongst them but one staff, with a pyck in the end off it, and one sword; depons he did see some off them have runts, palm and ash-tree staves, and rungs that they broke off the dyck; and that he did see Hugh Love, who hade come out of other countreyes, order them and put them in rings, and he heard him give them words of order and comand, and such as to bidd them handle ther arms, other words of comand, which he knowes not, for he never sawe sojores exercised; depones when he gave the word off comand, they obeyed by turning about, and goeing throwe others, and doeing such other things as he understands not; depons that John Fultoune, in Beith, was ther; depons that John Love, elder, was lyeing upon the hill, and not amongst the rest, and that he heard nothing off ther contributeing money, nor none of them say that they would goe to Bothwell-bridge, and depons he sawe them half ane hour together, and befor that he came away they lay downe, but that they were meet together, and about that work before he came; depons he heard no pistoll shott; depones he knowes nothing of guilt against any off the other pannalls; depones he was goeing by to his work, and was amongst them by negligence, and was drivelled amongst the rest by Hugh Love, and that the deponent drivelled amongst the rest for his pastime; depones also, that James Nivin joyned with Hugh Love to drivill them, and gave them words off comand; depons he cannot wreit; and this is the truth, as he shall answer to God.

Sic Subscribitur, LINLITHGOW.

John Smith, in Wattiestoune, aged fourtie-aught years, married, purged and sworne, depons that shortlie befor the defate att Bothwell-bridge, he did see John Love, elder, in Little Gavan; John Kings, elder and younger; John Cadwell, in Risk; David Smith, in Glenhead, att Middeltoune-hill, wher ther is a smiddie

upon the hill, and wher people meit evry day; depons that he sawe twentie persones, or thereby, men and ladds, at that place, and that Hugh Love was with them, and that they did as Hugh Love bade them, and that he drew them up and putt them in order, but does not remember what words he said to them, but that they sett downe ther sticks when he bad them, and tooke them up when he bade them, and that the deponent was ther and cast downe his clips, with which he was weeding the cornes, when Hugh Love bade him, and took it up when he bad him, and that what he did and sawe was but sport, and that he sawe ane sword amongst them, and the rest hade sticks and staves, and that one of the staves hade a pick in the end off it; depones that what the deponent and the rest did was nothing but sport, and that the deponent being weeding corne near by went up to them; depones he sawe James Nivin, in Risk, ther, but sawe him doe nothing but lyeing upon the syde off the hill with John Love, elder, in Little Gavan; depones he heard no shott amongst them, nor heard them say that they intendit to goe to Bothwell-bridge, nor heard any motion made amongst them anent collecting of money; depones he never sawe such a meitting or drivilling amongst them, aither before or since-syne; depones they did not continew above two houres together, and that the deponent was with them about ane hour, and the rest off the tyme he was weeding corne ther, besydes them ther; depones that John Kings, elder and younger, and John Cadwell, were not amongst these that were exercised or drivelled, but lyeing at the smiddie door; depones that efter they hade done with ther drivilling, John Love, in Little Gavan, took out the king's proclamatione and read the samen publictly to them, and efter it was read, they cryed all 'God save the King,' and tooke off ther bonnets; depons that John Love said, that the king's proclamation bade them be in readines to goe to the king's standart at a call, and they answered generallie 'yes;' depones he knowes nothing as to the remanent pannalls; and this is the truth, as he shall answer to God; depons he cannot wreitt.

Sic Subscribitur, LINLITHGOW, I. P. D.

Henry Adam, in Muirdycks, aged twentie-three years, or thereby, married, purged and sworne, and admitted a wittnes *cum nota*; depons the week befor the defate at Bothwell-bridge, on the Friday, as he remembers, he sawe a meeting off betwixt twentie or threttie persons, att Middletowne-hill, whereof some of them were six or sevine years of age, and others of different years, and that he sawe John Love, elder, ther, lyeing beside James Nivin, and sometymes drivilling amongst the rest; depons he sawe John King, elder and younger; Alexander Clerk; John Caldweell, in Risk; John Caldweell, in Hall, off Beltrees; John Orr, in Beltrees; and David Smith, in Glenhead; with other twentie or threttie drawing up

by Hugh Love, and drivilling as sojores use to doe; and that he heard him bid them handell ther armes, and lay downe their armes, and other words of command; depons he sawe no armes amongst them, but a sword and a pistoll, and ane Locaber axe, and sawe no pick amongst them; depons he heard a shott, but knowes not who lett it off; depons they were meet before he came to them, and he stayed about ane quarter of ane hour with them, and left them together; depones some hade staves, sticks and branches of trees; depons these boyes of six or sevin yeares of age were not drawen up amongst them, but standing at ther syds; depons that he heard some of them say they would go to Bothwell-bridge on the Munday a morning thereafter, but they did not tell to which syd they would goe, nor knowes he whom he heard say so; depons that John Love, elder, that same night efter the meitting was dissolved, did say to the deponent, that the said John Love and the deceast Robert Stewart hade betwixt themselves about three hundreth merks, and John Love disyred the deponent to take it to the generall off the Whiggs at Bothwell-bridge, and offered him twentie pound to carry it; but the deponent would not take the money, nor goe with it, unlesse they hade given him a horse; depons he sawe no money collected by the pannall, and that he never sawe them randevouzed or exercised at any other tyme, but heard ther was ane other randevouze; depons he cannot wreitt; and this is the truth, as he shall answer to God.

Sic Subscribitur, LINLITHGOW, I. P. D.

Hugh Smith, in Wattiestoune, aged threttie yeares, or therby, solutus, purged and sworne, depons he did see that meeting at Middletoun-hill the week befor Bothwell-bridge, wherat some of the pannalls were present, consisting of about twentie men and lads; depons they were mett before he came to the place, and he knowes nothing off the occasione off ther meeting, iff it was accidental or not, or iff they came to hear the king's proclamation or not; but depons when he was ther, one John Love took out the king's proclamation and read it, and disyred them to say 'God save the king,' and that all off them said so that were of knowledge; depons he nether heard them say, that they would joyne with the rebels, nor that they would not joyne with them; depones they said it was fitt to assist the king's standart, and that they would do it; depons that he did not hear they say att any time that they were breeding themselves sojores for the king; depons that he saw them together only half ane hour, and thinks they were only but ane hour together in all, and depons he did then see them dismissee themselves, and every one of them goe severall wayes, the herds to ther cattell, and the rest of them to ther owne homes; depons he cannot wreitt. *Sic Subscribitur,* LINLITHGOW.

John Fulton, merchant at the Kirk of Beith, aged twentie-four years, or therby, married, purged and sworne, depons he did see that

meeting at Middletoun-hill, the week before the defate at Bothwell-bridge, or the week preceding, wher some off the pannalls were, but depons he does not know what was the occasione off that meeting, whither it was accidentall or by chance, or iff it was upon designe, aither off hearing the king's proclamation read or any other designe; depons he was near that place, comeing allongst from his own residence, when they were meiting, and did see them come separatly to the place, some from keeping of ther cattell about twelve a'clock off the day or a littel efter, when the cattell were in the folds or houses, and some from the smiddie, and that he saw some of them come by twoes but nott many, that the meitting was made up pairtlie off herds and lads, and pairtly off men; depons that he heard John Love, elder, now deceast, read the king's proclamatione, and tell them to waitt on the king's standart when called, and that they generally cryed 'God save the king,' and said they generallie said they would assist the king's standart, tho' they cannot say all of them particularlie; depons he nether heard them say they would joyne with the rebels nor not joyne with them, but that they would assist the king's standart, nor did he hear them say that they were breeding themselves to be sojores to the king; depons that they stayed together about one hour only, and then did separat themselves, and some of them went to the cattell againe, and some to ther houses, and some to the weeding of ther corne, and some, particularlie John and James Smithes and the deponent, whose houses were all one way, went together so farr as ther way lay; and this the truth as he shall answer to God. *Sic Subscribitur,* JOHN FULTON.

John Smith, in Watterzeat, aged fourtie-eight yeares, or therby, married, purged and sworne, depons he did see that company off men and lads that meet at Middletoun-hill one day off the week before Bothwell-bridge, at which some off the pannalls were; depons ther meeting together was accidental, comeing about ther busines to the smiddie, some for one adoe, and some for aneother, and that the herds and lads came ony for ther play; depons he knowes nothing of any designe they hade in meeting, aither to hear the proclamation or any other causs, but meerly accidental for ther affaires at the smiddie and ther pastime; depons that John Love, being lyeing upon the brae syde, with some other aged men, told them he hade the king's proclamatione, and there were now two armies in the fields, and he would ask them which off them he would goe to, and that he would read the advertisement in the proclamatione to them, and it was fitt for them to goe and assist the king's standart when called, and that accordingly he reade the king's proclamatione to them, and such off them as hade bonnetts threw them up, and cryed 'God save the king,' and that it was good reasone that John Love hade said that they should goe and assist the

king's standart; depons that he did not hear them say that they were breeding themselves sojores for the king, nor that they would never goe to assist the rebels, nor say any more to that purpose then what is above; depons that they continewed together only for ane hour, and the deponent did see them come together, and he himself being about his work, at a littel distance, and seeing them come barefootit, without his coat, to see the lads play, and that they then separat themselves and went every one a sundrie gatte, the herds to ther cattell, and the rest to ther houses and works; and this is the truth, as he shall answer to God.

Sic Subscribitur,

LINLITHGOW.

The lords ordaines the assyse to inclose, and returne ther verdict to-morrow.

May 7th, 1687.

The said day the persons who past upon the assyse of John Kings, elder and younger, and others, returned ther verdict in presence of the said lords, wheroff the tenor followes.

The assyse, all in one voice, be the mouth of James Currie, ther chancellor, finds the pannalls John King, elder, in Meikle Gavien, and John King, younger, ther; John Caldwell, in Risk; David Smith, in Glenhead, not guilty off the crymes lybelled of treasons, in respect that any meitting that was accidental, some being about ther necessary affaires, and ather designed for sport and play, finds it provine that at the close of the meitting the king's proclamation was publictly read, wherat they generallie cryed 'God save the king,' and were willing when called for to follow and assist the king's standart; and as for John Love, junior, in Littel Gavan; Alexander Clerk, in Meikle Gavan; William Caldwell, ther; Umphray Barbour, in Risk; William Orre, ther; John Patterson, in Lochsyde; John Caldwell, in Hall, of Beltrees; John Orr, in Beltrees; Thomas Caldwell, ther; William Caldwell, in Glendarloch; Alexander Robieson, in Trees; Robert Orr, in Beltree-muire; William Caldweell, in Brunt-hills; Robert King, in Gleanhead; Robert Orr, in Beltrees; James Robieson, in Wardzeat; the deceast John Love, in Littel Gavan, finds them not guilty off being at the meitting, in respect ther is no probation against them.

Sic Subscribitur, JAMES CURRIE, Chan.

Fountainhall's Account of this Case, is as follows:

"May 4, 5, and 6. At the Criminal Court, sir John Dalrymple, his majesty's advocate, and Fetternier, lord Glasford his informer, pursue 23 feuars and wadsetters of Glasford, &c. for being at Bothwell-bridge, at least for rendezvousing at that time, and resetting rebels. To cut off their defence on the proclamation in April 1683, declaring all free who were not cited or attached before the 1st of January 1687, he caused cite them on the penult of December 1686. Sir George M'Kenzie alledged for them, rendezvousing without arms was not relevant to infer treason. And the Justices found it so, unless it could be proven, that at the rendezvousing, (which might be for joining with the king's forces) they expressed their design of joining with those at Bothwell-bridge. The king's advocate complaining of this interlocutor, as too strait in point of relevancy, he moved the lords, for the king's interest, to change it, that even the naked rendezvous without arms (not being convocate by any lawful authority) was sufficient.

"On their exculpation, they proved, that the meeting was meerly accidental; and that, when their cattle were resting in the folds, one of them having the proclamation against the rebels, read it, and asked, whom they would be for? And they all threw up their bonnets, and owned they would be for the king; and he, in sport, bad them get muskets then, which they did, by cutting down some branches of trees, and so in raillery made a mock muster. Glasford's witnesses declared, they had been examined on a precognition, and were threatened to depone against them: and their depositions being read to them, they declared there was more written than they said; for they could not write; and that they were promised rewards to abide at it, and threatened with hanging if they resiled. This practising being so unwarrantable, the assize (whereof provost Curry was chancellor) assoilzied them. One of them refusing to own the king's authority, (on whom the king's advocate took pains to save him) was banished to the plantations. Glasford was much dashed at this; for, being Popish, he judged himself so sure, that in a new signature of his own, he had insert their lands also."

360. The Trial of Mr. JAMES RENWICK, for High Treason:
4 JAMES II. (of England) A. D. 1689. [Now first published
from the Records of Justiciary at Edinburgh.]

CURIA JUSTICIARIE, S. D. N. Regis tenta in
Prætorio Burgi de Edinburgh, octavo die
mensis Februarij, anno millesimo sex-
centesimo octuagesimo octavo, per no-
bilem et potentem Comitem Georgium
Comitem de Linlithgow, Justiciarium Ge-
neralem, et honorabiles viros dominos
Johannem Lockhart de Castlehill, Da-
videm Balfour de Forret, et Rogerum
Hog de Harcarss,* et Patricium Lyon de
Carss, Commissionarios Justiciarie dicti,
S. D. N. Regis.

Curia legitime affirmata.

Intran.

Mr. James Renwick, Field Preacher, Prisoner.

INDYTED and accused, That wher, not-
withstanding by the fundamental lawes of this
kingdom and constant practice thereof, and by
the particular acts of parliament after-men-
tioned, viz. by the 129th act, 8th parliament,
king James 6th; and the 151st act of his 15th
parliament; and 1st act of his 18th parliament;
and by the 2d act, 2d session, 1st parliament,
king Charles 2d; and 2d act of his 3d par-
liament, the kings of Scotland, their aires and
royall successors, are acknowledged to be the
sovereign monarchs, absolut princes, judges
and governours of this realm, and that none
shall declyne the king or his authority, under
the paine of treason, and that the kings of this
realme hold their crown and authority from
God Almighty only, and therfor the entering
into leagues and covenants, rying in armes
against the king, or suspending him from the
exercise of his government, or putting limita-
tions upon the alledgeance and obedience of
the subjects, ar declared treason, and that upon
the death of any king, the royall and sove-
raign authority is immediately *et ipso facto*
devolved upon the nixt lawfull successor, and
that no objection or pretence whatsoever can
imped or obstruct the same, and the designe to
oppose or divert the succession is declared high
treason. Neverthesse, it is of veritie, that the
said Mr. James Renwick having shaken of all
fear of God, respect and regard to his ma-
jestie's authority and lawes, and having en-
tered himself into the society of some rebels
of most damnable and pernicious principles and
disloyall practises, he took upon him to be a
preacher to these traitors, and became so des-
perat a villane, that he did openlie and fre-
quently preach in the fields, declaiming against

* Lord Harcarss was, on the first of the
following month, turned out of the Criminal
Court.

the authority and government of our sove-
raigne lord the king, denying that his most
gracious soveraigne king James the sevinth is
lawfull king of this realme, and asserting that
he was ane usurper, and that it was not lawfull
to pay cess or taxes to his majestie, but that it
was lawfull and the duty of subjects to rise in
armes and make warr against his majesty and
those commissionat by him, for which crymes
the said Mr. James Renwick was declared
fugitive and denounced rebell, and by open pro-
clamation, published at the marcat croce of
Edinburgh, and printed, bearing date the—
day of——* the liedges wer convocat ther-
anent and requyred to apprehend him, and ther
was a fyne of ane hundreth pounds sterling as
a reward or encouragement to such as should
apprehend him, and yet he did still continue in
his former desperat obstinacie, keeping con-
venticles in the fields, and requyring his
hearers to provide armes, and to come armed
to these rendivouzes of rebellion; and particu-
larly upon one or other of the dayes of Sep-
tember last he kept a field conventicle upon
the ——* muir, near Paisley, wher ther
wer many persons in armes, and upon one or
other of the dayes of November last, and lyk-
wayes upon the eighteenth day of January
last bypast, he did keep two conventicles at
Breadscraigs, within two myles of the capi-
tall city of the kingdome, wher he not only re-
newed his former treasonable doctrines and po-
sitiones, but lykwayes with his own hand he
wrote down in a book found upon him when
he was taken, the heads of these treasonable
sermons, with the dates and places wher he
had preached the samen; and being appre-
hended within the city of Edinburgh, he did
desperatly fyre upon the officers that came
to take him. And being brought before the
lord chancellor and others counsellors in the
thesaury chamber, upon the first day of
February, 1688 years, instant, lyke a des-
perat preclamable traitor, he did openly deny
and declyne our soveraign lord's authority, and
assert that our most gracious king was ane
usurper, and no lawfull king, and owned that
he hade preached the same; lyke as the said
Mr. James Renwick's being brought to the
viscount of Tarbat's lodgings, he did ther, in
presence of the lord chancellour and severall
other counsellors, upon the third day of
February instant, avowedlie and traiterouslie
declare, that he could not in his conscience ac-
knowledge the king to be his lawfull sove-
raigne, and that the lineal succession did not
give a right to governe, and he thought it not

* So in the original.

lawfull to pay cess to the king, because it was imposed for maintaining of forces to suppress the gospel, and that all persons who made payment of any cess wer involved in that guilt, and adhered to his preaching book, and declared the same to be his own hand write, and owned that he had preached to the people to come in armes to his meetings, for defence, in case they mett with opposition, and that it was lawfull sua to doe. Wherthrowe the said Mr. James Renvick has committed and is guilty of the crymes of high treason above specifit, or ane or other of them, and is actor, art and part, of the samen; which being found be ane assyse, he ought to be punished with forfaiture of lyffe, lands and goods, to the terror and example of others to committ the lyke heirafter.

Persewer.—Sir John Dalrymple,* of Stair, our sovereign lord's advocat.

His *Majestie's Advocat* declares he insists upon these poynts of his lybell, viz. upon his denying the king's authority, and that it was unlawfull to pay cess to the king, and declaring that he had preached to his people to come in armes to his meetings.

The Lords Justice Generall, Justice Clerk, and Commissioners of Justiciary, finds the indytment as it is restricted by his majesty's advocate, relevant to inferr the cryme and paine of treason.

ASSISA.

James Hume, of Kimerghame.

John Hume, of Nynwells.

John Martyne, clerk to the manufactory.

Alex. Martyne, somtyme clerk at Dunce.

Robert Halyburtoun, merchant.

Thomas Lowrie, merchant.

Archibald Johnstoune, merchant.

Thomas Wyllie, merchant.

James Hamiltoun, vintner.

William Cockburn, merchant.

James Hamiltoun, younger, stationer.

Robert Currie, stationer.

Joseph Young, merchand.

John Cumming, merchand, in Glasgow.

Ninian Bannatyne, of Kaimes.

The assyse lawfullie sworne, no objectione of the law in the contrair.

Mr. James Renvick being examined in presence of the justices and assysers, and interrogat by his majestie's advocat, if he owned king James the Seventh, who now reignes, to be his lawfull king; declares he cannot deny his being *de facto* on the throne, but denies that *de jure* he ought to reigne, or that he is lawfull soveraigne, and that he cannot, in con-

* "Upon the 17th of February, I find sir George M'Kenzie his commission, as king's advocate, is read, and sir John Dalrymple is turned off. The reason of this change, I leave to the civil historians." Wodrow.

science, obey him as his lawfull king; declares he thinks it unlawfull for subjects to pay cless [cess] to the king; declares he taught to his people that came to his field-meetings, that they should come in armes and oppose the king's forces, and fight with them in case they came against them.

Sic Subscibitur,

JAMES RENWICK.

LINLITHCOW.

George Rae, servant to the clerks of privy councill, being solemnlie sworne, depones, That Mr. James Renvicks, the pannall, being examined before a committee of councill, he did emitt the same treasonable expressions, denying the king's majestie's authority, and others mentioned in his above written declaration; and this is the truth, as he shall answer to God.

Sic Subscibitur,

GEORGE RAE.

David Gourlay, servant to the clerks of councill, being solemnly sworn and purged, depons, That Mr. James Renvick being examined before a committee of councill, he heard him deny the king's authoritie, and that he could not in conscience own him for his lawfull soveraigne; and that it was unlawfull for subjects to pay cess to the king, and that he owned his preaching-book produced, and the two sermons written therein; and that he preached to his people to come in armes to his field-meetings; and this is the truth, as he shall answer to God.

Sic Subscibitur,

D. GOURLAY.

The hail persons of the inquest having chosen Ninian Bannatyne, of Kaimes, and he, with the said persons of inquest, having considered the lybell persewed at the instance of his majestie's advocat against Mr. James Renvick, with my lord advocat's restriction of the lybell, and the lords of justiciary, their interloquitor thereupon, finds by his own judiciall declaration and confession, and witnesses adduced, that the said lybell, as it is restricted by the lord advocat, sufficiently proven; and that the said Mr. James Renvick is guilty of the crymes lybelled.

Sic Subscibitur,

WM. BANNATYNE, Chan.

The Lords Justice General and Commissioners of Justiciary, having considered the said verdict of assyse, they, be the mouth of John Leslie, dempster of court, decerned and adjudged the said Mr. James Renvick to be taken upon Friday next, being the tenth of February inst. to the Grass-market of Edinburgh, betwixt two and four a-clock in the afternoon, and ther to be hanged on ane gibbet till he be dead; and all his lands, heretages, goods and gear whatsoever, to be forfeaulted and escheat to his majestie's use, which was pronounced for doom.

An Account of Mr. Renwick's being seized at Edinburgh.

In the beginning of February this year, Mr. Renwick was seized in a private house in Edinburgh, and executed upon the 17th. He was the last who suffered publicly, and he wanted not impressions, his blood would stem the current of blood we have seen running those eight and twenty years.

This pious person having been minister to the society people, who endured no small hardships for many years, and separated from the rest of our Presbyterian sufferers for conscience sake since the year 1680, and very little of him being known, and the first rude draught of his life writ by the reverend Mr. Alexander Shiels, having come to my hand, I shall from it, and some other original papers under Mr. Renwick's own hand, before me, give the reader a few of the most remarkable passages of his life, and a larger account of his sufferings and trial, from the registers and other papers, than I have yet seen.

In the entry I take the liberty to observe, as in part I have already hinted, that, had not this good man been overdriven by several of the people he was embarked with, he would not have run the lengths he went in some things; and had he outlived the revolution, I make no question but he would have come in with Messrs. Shiels, Linning, and Boyd, to join with the establishment of this church, and might have been a very useful instrument in it.

Mr. James Renwick was born February 15, 1662, of mean but pious parents, in the parish of Glencairn. His religious disposition appeared very early, and his parents had the hopes of his being publicly useful. His father, who died about the year 1676, declared to some of his friends upon his death-bed, that he was under the thoughts his son would have but a short time in this world, and die publicly in his youth.

During his childhood he wanted not temptations and vexations about the foundations of religion, out of which he got with advantage, and came to great establishment, and a settled faith of God's being, attributes, providence, and a future state. He was educated at the college of Edinburgh, and there fell under some reproaches and aspersions, from which the writer of his life fully vindicates him. When he came to receive the degree of master of arts, he refused the oath of allegiance, and publicly objected against the nauseous titles and compliments given to the then duke of York, in the dedication of Theses, emitted by the class he was in; for this reason he was excluded from a share in the public laureation, but received his degrees privately.

When prosecuting his studies at Edinburgh, he fell in with the people who at that time raised objections against the indulgence, and came that length in his scruples upon that head, that he gave over in a little time hearing the indulged ministers. Frequently afterwards

he used to signify that he was extremely affected at Mr. Cargil's [see his Case, vol. 10, p. 849] death, July 21, 1681. And upon the back of this entirely joined himself with that party who cast off the king's authority, and set up on a lay distinct from the principles and practice of other Presbyterians since the reformation. He kept their general and particular meetings, and was not a little useful to that people by his letters, and quick apprehension of things.

Mr. Renwick, when thus embarked with the society people, was a most violent opposer of Gib and his followers, though he wanted not aspersions cast upon him as if he had been dipt with them. And when that vile blasphemer had seduced about thirty persons, most part silly women, and was apprehended and extremely favoured by the duke of York, at that time in Scotland, upon all occasions he opposed Gib,* and was very useful to recover not a few from his delusions.

In the year 1682, though Mr. Renwick joined in proclaiming the Lanerk declaration, yet he always acknowledged several expressions in it to be unadvised. A little after this, the societies sent Mr. Renwick abroad to the university of Groningen to prosecute his studies; and there, after about half a year's study, he was, April 1683, ordained indefinitely to the ministry with imposition of hands, and at his ordination had the favour done him, that, instead of the Belgick forms, he was allowed to sign the Westminster confession of faith and catechisms.

September 1683, he came home to Scotland through a great many hazards and difficulties, and the society people chose him as their minister, and subjected only to him. He was very frequent in preaching and baptizing during the following years, till he was taken; and met with many surprising and singular deliverances from his pursuers, several instances of which lie before me, too long here to be inserted.

Towards the end of the year 1684, when the forenamed declaration against informers and intelligencers, was first proposed to him, he was very much against it, declaring his fears of the sad effects it might have; yet at length was brought into it. It was he who penned the Sanquhar declaration, and proclaimed it May 28, 1685, with about two hundred of his followers, wherein they deny king James's authority, and renounce all subjection to him.

About that same time he refused to join the earl of Argyle, [see his Case, vol. 8, p. 843] and his party, till they would so state their quarrel, that he and his followers could join in it. In the years 1686 and 1687, he continued preaching and catechizing such as would subject to him up and down the West and South. He appeared with no small keenness against

* The leader of the sweet singers. See 2 Wodrow, 220, et seq.

the liberty at this time granted to Presbyterians, and inveighed against their accepting it from a Popish prince.

Against this he drew up a paper, and came into Edinburgh January this year, and gave a double of it to one of the Presbyterian ministers in that city, to be communicated to his brethren. It hath been printed under the title of *The Testimony of some persecuted Presbyterian Ministers against Toleration, &c.* It being common, I need not insert it.

From Edinburgh he went over to Fife, where he continued preaching till the last of January, which day he came back and lodged in a friend's house in the Castle-hill, who dealt in English goods; and the custom-house officers were frequently searching it for prohibited goods. Thomas Justice, one of the people who used to look after such things, by some of his spies got notice that a stranger was come to that house that night, and the master of the family being a known follower of Mr. Renwick's, it was suspected it might be he: yea, that very night the said Justice, in a company where the discourse happened to fall upon Mr. David Houstoun, and a rumour a going that he was seized in England, said, he hoped he should have another of them ere long, and taking up a glass, drank Mr. Renwick's health, swearing he hoped to grip him ere seven next morning.

Accordingly, February 1, early in the morning, the waiters attacked the house, pretending they were searching for run goods. Mr. Renwick coming out of his room upon some noise, Justice standing at the door, said, 'My life for 'it this is Mr. Renwick; all in this house must 'go to the guard to see what trade they are of.' Mr. Renwick, with two of his friends, retired to another door, and opening it, found it guarded by some of Justice's company. One of them essayed to force his way, and was resisted by the waiters; whereupon Mr. Renwick drew a pistol, and discharging it without hurting any of them, obliged them to give way, and got out, but when going by them, one of them struck him on the breast with somewhat or other, and bruised him very sore, which marred him in his flight, and the pain of it was the occasion of his fall more than once when running.

By this time Justice had raised the cry for assistance to take the dog Renwick: however Mr. Renwick got down the castle-wynd, and even to the head of the Cowgate; but having fallen several times, and lost his hat, he came to be noticed, and being hotly pursued, at last was taken by a profligate fellow. The two others escaped.

Mr. Renwick was straight carried to the court of guard, where, for a while, he was very much insulted. Graham, the captain of the guard, delivered him up to a committee of the council, who ordered him to be put in the irons. When there alone, he afterward signified to some of his friends, being the first opportunity he had of stated supplication, he betook himself

to God in prayer, humbly begging, that the Lord might carry him through his sufferings, cheerfully resigning his life to the Lord, earnestly begging, that enemies might be permitted to do no more but take his life, and not to torture and mangle him. He observed to them, that the Lord was pleased to answer him remarkably enough, several projects this way being disappointed.

Before he received his indictment, he was carried to the viscount of Tarbet's chamber, and there examined very particularly. Two little note-books of his were found upon him when taken, where, in his own hand, were the notes of two sermons he had lately preached at Broad-craigs, wherein he had disclaimed and disproved the king's authority, and had reasoned against the paying of cess, with some other things, and proven, that bearing arms, for the defence of the gospel at field-meetings, was lawful. This I find Mr. Renwick giving an account of, in an original letter of his before me, to a friend, dated February 6.

Upon those points he was examined, and very frankly acknowledged the doctrine he had taught, and with much composure and boldness he defended it. In the same letter, he gives an account of his examination upon some other things contained in a pocket-book found upon him, which were only forms of address to some professors abroad, and Robert Hamilton. Those being plain and set down, he owned he corresponded with them; and being asked the subject of their correspondence, he answered, he used to give account of his and his hearers sufferings, and beg their sympathy.

There were moreover some capital letters in the same book, such as A. S. M. S. J. W. A. W. P. R. P. A. M. M. at G. where a hat was left. The committee were extremely importunate to discover their names. Mr. Renwick knowing they were as obnoxious already, as any thing he could say would make them, ingeniously declared they were the names of persons he was to have writ to, Mr. Alexander Shiels, Michael Shiels, James and Archibald Wilsons, Peter Rayning, and Peter Aird, all of whom were upon their hiding, and out of their reach. He made some difficulty upon the last, till the advocate promised to save her from any trouble upon his account: and then, to escape the torture they threatened him with, he told them it was one Morris Miller, at Glasgow. This ingenuity in him did much soften the rage of his enemies.

After this examination he received his indictment, February 3, and the annexed list of witnesses.

[Here he sets forth the Indictment.]

With this libel a list of forty-five was given him as his assyse, to judge upon the probation, out of which fifteen were to be chosen. I have formerly observed, that it was customary in this period to vex Presbyterians, who could not actively join in the bloodshed of this

time, by putting them upon the assizes of the sufferers, and that both to expose them if they consented, and to bring them into trouble if they refused.

Thus I find some worthy persons, some of them very considerable sufferers themselves, put upon Mr. Renwick's assize, as sir John Maxwell of Nether-pollock; sir Robert Stuart of Allanbank; Mr. Robert, since sir Robert Blackwood, merchant, in Edinburgh; Mr. George, after sir George Hume; Samuel, since sir Samuel M'Clellan, merchants, there; George Mosman; John Armour, merchant, in Glasgow, and many others. None of these would be concerned in the condemnation of this good man.

Here he sets forth a list of the assize. But he omits the name of Joseph Young and substitutes that of William Somervel, Chamberlain of Douglas.

Together with this indictment and those assizers, Mr. Renwick received the following list of witnesses signed by the pursevant:

John archbishop of Glasgow,
George viscount of Tarbet,
—— Lord Livingstone,
Colin earl of Balcarras,
—— Earl of Traquair,
General major Graham,
Sir William Paterson,
Mr. Colin Mackenzie, clerk to the council,
Sir Thomas Moncreif of that ilk,
Mr. William More, clerk to the session,
—— Master of Balmerino,
George Row, David Gourel, Hugh Ross,
merchants in Edinburgh.
James Boyl, prisoner in the Canongate.
(Signed) JAMES GUTHRIE, Pursevant.

When Mr. Renwick had gotten this indictment, by the favour of the keepers, his mother Elizabeth Carsan, a singularly religious person, was permitted now and then to see him. With her he conversed in much composure and affection, and frequently declared his great grief to leave his people who had been under his ministry; but added, were it in his choice, he could not think upon it without terror, to continue much longer in his conflicts with a body of sin and death he carried about with him; that he adhered to all he had preached. This was upon the Sabbath, February 5.

In his letter, February 6, before referred to, after he hath given an account of God's great goodness to his soul, and desired the persons whose names he decyphered, might be acquainted with what he had done, to save himself from torture, he concludes, 'I desire none may be troubled on my behalf, but rather rejoice with him, who with hope and joy is waiting for his marriage and coronation hour.'

At another time his mother asking him how he was; he answered, well, but since my last examination I cannot get praying. His mother looking on him with much surprize and concern, he added, I can hardly get praying,

VOL. XII.

being so much taken up in praising, and ravished with the joy of the Lord.

When his mother, who was extremely affectionate, expressed to him her fears of fainting, and running to extremities, saying, How shall I look to that head and these hands set up upon the ports of Edinburgh? I have so much self, that I will never be able to endure it. He smiling said, She would never see them there; adding, I have willingly parted with my life, and humbly sought of the Lord to bind them up from going any further; and I am much persuaded, they shall be permitted to go no further. When at liberty, he used to be much troubled with fears about torture, and mangling his body, but now they were intirely removed.

Some time after, others of his friends found means to get in to him; them he pressed to mind salvation work, and to get their peace made with God, and to be stedfast in the way of truth. When they regretted his being taken away from them, he said, they should rather rejoice that he was to be taken away from the reproaches and calumnies he had lien under, which he hoped his death would wipe away. He further told them at his first appearance, he was once thinking to wave the counsellors interrogatories, and put them upon probation; but he found his soul filled with darkness upon those thoughts, and resolved to be plain and full in his confession, as he had been in his sermons, and in so doing he had peace.

Upon Wednesday, February 8, Mr. Renwick was brought before the justiciary. After his indictment was read, the advocate restricted it to his denying the king's authority, his preaching the unlawfulness of paying cess, and that he had called his followers to come with arms to the field-meetings. All I find in the registers for probation, is his own signed confession, which I give from them.

[Here he inserts the examinations.]

I shall now give a larger account of his Case from the above cited account of his life, and other papers before me.

When before the justiciary, he adhered to his former confessions with great composure and sedateness, and the lenity of the court was beyond what had been their use and manner formerly: he did not seek lawyers to plead for him, but the lords permitted him to speak what he had to say, without threatenings and interruptions, even though he gave none of them their titles, save the nobility.

After the indictment was read, the justice-clerk asked him, if he adhered to all his former confessions, and acknowledged all that was in the libel? He replied, 'All except where it is said, I have cast off all fear of God, for it is because I fear to offend God and violate his law, I stand ready to be condemned here.' Then he was interrogated, Whether he owned authority, and if he owned king James 7, to be his lawful sovereign? He

2 P

answered, 'I own all authority, which hath its prescriptions and limitations from the word of God, but cannot own this usurper as lawful king, seeing both by the word of God such an one is incapable to bear rule, and also by the ancient laws of the kingdom, which admit none to the crown of Scotland until he swear to defend the Protestant Religion, which a man of his profession cannot do.'

He was urged by the lords, How could he deny him to be king? was he not the late king's brother? had the late king any children lawfully begotten? was he not declared successor by act of parliament? The pannel answered, 'He was, no question, king *de facto*, but not *de jure*; that he was brother to the other, he knew nothing to the contrary. What children the other had he did not know; but from the word of God, which ought to be the rule of all laws, or from the ancient laws of the kingdom, it could not be shewn that he had, or ever could have any right.'

The next question propounded to him was, If he owned or had taught it to be unlawful to pay taxes or cess to his majesty? He answered, 'As to the present cess, exacted to the present usurper, I hold it unlawful to pay it, both in regard it is oppressive to the subjects for the maintenance of tyranny, and because it is imposed for the suppression of the gospel. Would it have been thought lawful for the Jews, in the days of Nebuchadnezzar, to have brought every one a coal to augment the flame of the furnace, to devour the three children, if so they had been required of the tyrant? And how can it be lawful, either to oppress people for not bowing to the idols the king sets up, or for their brethren to contribute what may help forward their oppression on that account?'

Next he was interrogated, if he owned that he taught his hearers to come armed to their meetings, and in case of opposition, to resist? He answered, 'It were inconsistent with reason and religion to teach otherwise; you yourselves, in the like circumstances, would do it. I own I taught them to carry arms to defend themselves, and to resist your violences.'

Further being asked, if he owned the note-books taken upon him, with the sermons written therein, and that he had preached them? he answered, 'If you have added nothing, the books being in your custody, I will own them, and am ready to seal all the truths contained there with my blood.'

All his confessions being read over, and he required to sign them, he said, he could not do it, since he took this to be a partial owning of their authority. Some reasonings passed upon this subject; at length he said, I will sign the paper as my testimony, but I declare it is not in obedience unto you.

The assize were next called upon by fives, and sworn. Mr. Renwick was asked, if he had any thing to object against them. He objected nothing against any of them, but pro-

tested, that none might sit on his assize who professed Protestant or Presbyterian principles, or an adherence to the covenanted work of reformation. The assize unanimously brought him in guilty; and sentence was given, that he should be executed at the Grassmarket on the Friday following. The earl of Linlithgow justice-general, asked him if he desired a longer time. He said, it was all one to him; if it was protracted, it was welcome, if shortened, it was welcome; his master's time was the best time. However, without his knowledge, and after he had openly refused, when the advocate urged him to desire it, he was delayed till the 17th of February.

During this interval Mr. Renwick was visited by bishop Paterson, doctor Monro, and others of that kidney. Meanwhile, which was not usual after sentence of death, not one of his friends for some time were permitted to see him. The bishop vexed him with his solicitations to save his life, and his queries he proposed to him; 'Thought he none could be saved but those of his principles? Would he kill himself with his own hand, since he might have his life upon such easy terms?' and others of that nature. Mr. Renwick answered, 'He never said or thought none could be saved but such as were of his principles; but he was of opinion those were truths upon which he was suffering, which he had not rashly concluded upon, but deliberately, and of a long time had been confirmed in, as what were sufficient grounds to suffer upon.' The bishop said, he was sorry to see him so tenacious, and throwing away his life, but wished him well, and took his leave of him. Afterwards he commended him as a youth of parts, and in the council pressed for another reprieve for him, which would have been easily granted if he would have petitioned for it. Yea, such was the bishop's professed kindness and concern in him, that he sent one to him the night before he was executed, desiring to know, if there was any thing lying in his power to do for him, and he would do it. Mr. Renwick returned him his thanks for his civility, and desired the messenger to acquaint the bishop, that he knew nothing he could do for him, or that he himself could desire of him.

At another time he was visited by one Mr. Macknaught, a curate, in his gown and canonical habit. At his coming in, Mr. Renwick told him he did not like his coat, it was a bad badge. The other said, he was not come to debate, but wished him well, and discoursed a little upon the toleration, inquiring at the close, what he thought of it, and of the men who accepted of it? Mr. Renwick answered, 'He was against the thing as not conform to the rule, but as for the men who embraced it, he judged them godly men.' The curate, after parting with him, commended him for gravity and ingenuity.

The advocate also made him a visit, and very earnestly pressed Mr. Renwick to supplicate, and to own the king's authority, and heard him

patiently as to his reasons why he could not fall in with his desire. The advocate told him he was very sorry for his death, and that it fell out in the short time he had been in his office, and gave, as the reason of it, the reports that had been industriously spread, that he was a Jesuit; and said, the Papists were enraged, that any, said to be of their principles, should deny the king's authority, and pushed his execution; and told him it was not in his power to stop it, unless he would own the king's authority.

Several Popish priests came frequently to him while in prison, and at their coming away were overheard saying, He was a most obstinate heretick. The keepers of the prison used to tell how vexing they were to him, and that he frequently desired them to leave him, so that it became a proverb among them at that time, be gone, as Mr. Renwick uses to say to the priests.

All the time he was in prison after his sentence, he was kept so close, that he could get nothing written. He began to write a testimony, but pen and ink were taken from him. Yet he found means that night before he suffered to send out a short paper, which I take to be that printed in the Cloud of Witnesses.

February 14. He was again brought before the council, and they signified to him how much kindness they had shewn him in giving him a reprieve unsought, and plainly enough insinuated there was yet room of lengthening it out; but he was fully determined not to table any petition to them.

At his return he was very cheerful, and a friend asking him how he was, he answered, very well, but he hoped to be much better in three days. He told his mother, who was sometimes admitted to him, that the last execution he was witness to, was that of Robert Gray above spoken of; and it was then born in on his spirit, that he would see no more of that kind, till he were executed himself.

Frequently he owned the necessity of his suffering at that juncture, and that he had firm hopes, that his death would not be without fruit. Very often he praised God for his goodness to him, in making his death and the manner of it so very easy to him. When he was asked, what the Lord would do with the remnant he left behind him; he answered, It would be well with them, for God had said, he would not leave his inheritance.

That morning before his death, February 17, the good man (jailor) of the Tolbooth came to him in his chamber, and told him he might have his life, if he would sign the petition he offered to him. Mr. Renwick answered him, that sufferers for the truth might indeed require that their persecutors should not take their life, and remonstrate against them; but he did not think it lawful to petition in his circumstances, since it would be a receding from the truth, and declining a testimony for Christ. Then the keeper desired him not to mention the cause of his death at the place of

execution, and to forbear reflections and irritating expressions. He answered, What God giveth me, I will speak, and nothing else, and nothing less; and begged the favour of him, that his mother and sister might be permitted to come in to him, and stay a little with him. The keeper objected, he would perhaps give them papers to carry out. Mr. Renwick answered, he might search them, and see, when they left him.

They were suffered to come in to him, and he took some meat with them very cheerfully. In his giving thanks they minded these expressions very distinctly: 'Lord, now thou hast brought me within two hours of eternity, and this is no matter of terror to me, more than I were going to lay down in a bed of roses, through thy grace. To thy praise I can say, I never had the fear of death since I came within this prison. O! how can I contain under the thoughts of this, to be within two hours of the crown of Glory?' He exhorted them much to prepare for death; for, said he, in itself it is the king of terrors, though not to me now, as sometimes it was in my hidings. But now let us rejoice and be glad, for the marriage of the Lamb is come, and his wife hath made herself ready: would ever I have thought that the fear of suffering would ever have been so taken away from me! but what shall I say? it is the doing of the Lord, and is marvellous in our eyes. I have many times counted the cost of suffering for Christ, but never expected it would have been so easy; who knows the honour and happiness of that? He that confesseth me before men, him will I confess before my heavenly father.

Perceiving his mother weeping, he exhorted her to remember, 'that whoever loved any thing better than Christ, was not worthy of him. If you love me,' added he, 'rejoice that I am going to my father, to obtain the enjoyment of what eye hath not seen, nor ear heard, neither hath it entered into the heart of man to conceive.'

Then he prayed with them, and therein he run out much in praises, 'That now he was getting above all conflicts with sin and sorrow, and where there should be no quarrels, or distance from God. He pleaded much in behalf of the suffering remnant, and that the Lord would not leave Scotland, asserting with great confidence of hope, that he was strengthened in the faith of it, that the Lord would be gracious to Scotland.'

In a little time he heard the drum beating for the guards to take him out to his execution, and rejoiced exceedingly, saying, 'Yonder the welcome warning to my marriage; the bridegroom is coming, and I am ready, I am ready.' Then he took his leave of his mother and sister, intreating them not to be discouraged, for ere all were done, they would see matter of praise in that day's dispensation.

After the usual manner he was taken to the laigh council-house, where, after reading his sentence, he was desired to say any thing he

had to say there. He answered, I have nothing to say to you, but that which is written Jer. xxvi. 14, 15 : 'As for me, behold, I am in your hand,' &c. Then he was told, he would not get leave to be heard on the scaffold, for ruffling of drums, and was desired to pray there. This he refused, asking if the drums would be ruffled, unless when they thought he spoke bitterly, and made reflections. They answered, they would be ruffled all the time, and urged him to pray, and put a friend, whom they allowed to wait upon him to the scaffold, to request him; but he still refused. Then they warned him to forbear reflections. He told them, he would not be limited; he had premeditated nothing, but what the Lord gave him, that he would speak. They offered him any minister he pleased to be with him; but he only desired the friend they had already granted him.

Mr. Renwick went very cheerfully to the place of execution, where there was a vast number of spectators. Executions had not been frequent for some time, and his circumstances were singular. Very little of what he said was heard, for the drums beat without intermission, till he was put over the ladder. Any thing gleaned up here, is from the person who waited upon him, with the help of a few others, who had placed themselves near the scaffold.

There was a curate standing at the side of the scaffold, who addressed himself to Mr. Renwick when he came up, and said, pray for the king, and we will all pray heartily for you. Mr. Renwick answered, he did not expect his prayers, and was come hither to bear his testimony against him, and such as he was. The other replied, pray for the king, whatever you say against us. Mr. Renwick answered, I will discourse no more with you, I am shortly to appear before the King of kings, and Lord of lords, who will shortly pour contempt on all the kings of the earth, who have not ruled for him.

He sang the 103 Psalm from the beginning, and read Revelations 19 chapter, and then prayed, commending his soul to the Lord through the Redeemer, and his cause to be vindicated by him in his own time. He declared this was the most joyful day he ever saw, and what he longed for, and blessed the Lord for the honour of the crown of martyrdom, an honour, added he, the angels are not capable of. He regreted he was disturbed in worshipping God, and said, but by and by, I shall be above those clouds, and enjoy, and worship, and glorify thee without interruption or intermission for ever. This is all that is remembered.

Prayer being ended, he spake to the people, and what was remembered was to this effect:

"Spectators, or if there be any of you auditors, I must tell you I am come here this day, to lay down my life for adhering to the truths of Christ, for which I am neither afraid nor ashamed to suffer: Nay, I bless the Lord that

ever counted me worthy, and enabled me to suffer any thing for him; and I desire to praise his grace, that he hath not only kept me free from the gross pollutions of the time, but also from many ordinary pollutions of children; and for such as I have been stained with, he hath washed and cleansed me from them in his own blood.

"I am this day to lay down my life for these three things: 1. For disowning the usurpation and tyranny of James duke of York. 2dly. For preaching that it was unlawful to pay cess. 3dly. For teaching that it was lawful for people to carry arms, for defending themselves in their meetings for receiving persecuted gospel ordinances. I think a testimony for these is worth many lives; and if I had ten thousand, I think all little enough to lay down for the same.

"Dear friends, spectators, and if any of you be auditors, I must tell you, I die a Presbyterian Protestant. I own the word of God as the only rule of faith and manners; I own the confession of faith, larger and shorter catechisms, sum of saving knowledge, directory for family worship, covenants, national and solemn league, the acts of the general assemblies, and all the faithful contendings that have been for the covenanted reformation.

"I leave my testimony approving preaching in the fields, and the defending the same by arms. I adjoin my testimony to all those truths, which have been sealed by blood, in scaffolds, fields, and seas, for the cause of Christ.

"I leave my testimony against popery, prelacy, Erastianism, against all profanity, and every thing contrary to sound doctrine, particularly against all usurpations and encroachments made upon Christ's rights, the Prince of the kings of the earth, who alone must bear the glory of ruling his own kingdom, the church; and particularly against the absolute power assumed by this usurper, that belongs to no mortal, but is the incommunicable prerogative of Jehovah, and against this toleration flowing from this absolute power." Here he was ordered to dispatch; and answered, I have near done.

Then added, "Ye that are the people of God, do not weary in maintaining the testimony of the day, in your stations and places; and whatever you do, make sure an interest in Christ, for there is a storm coming, which will try your foundations. Scotland must be rid of Scotland, before the delivery come. And you that are strangers to God, break off your sins by repentance, else I will be a sad witness against you in the day of the Lord."

Here they caused him to stop, and ordered him to go up the ladder. There he prayed again, and this expression was distinctly heard: "Lord, I die in the faith that thou wilt not leave Scotland, but that thou wilt make the blood of thy witnesses, to be the seed of thy church, and return again and be glorious in this land. Now, Lord, I am ready, the bride, the Lamb's wife hath made herself ready."

When the napkin was tying about his head and face, he said to his friend who was permitted to be with him, "Farewel, be diligent in duty, make your peace with God through Christ. There is a great trial coming as to the remnant I leave. I have committed them to God; tell them from me, not to weary, nor be discouraged in maintaining the testimony. Let them not quit or forego one of those despised truths. Keep your ground, and the Lord will provide you teachers and ministers, and when he comes he will make all those despised truths glorious upon the earth."

When he was turned over the ladder, he had those words in his mouth: "Lord, into thy hands I commit my spirit, for thou hast redeemed me, O God of truth." He died in the 26th year of his age.

Thus I have given a pretty large account of this zealous, serious, and pious youth, especially of his sufferings. The writer of his life adds a large vindication of the heads upon which he suffered, in which I observed nothing but what the reader will meet with in the Hind let loose, upon those subjects. I have observed some things intermixed in the history of Mr. Renwick's life, wherein I am sure the worthy writer hath been misinformed, and some other passages that breathe a little of that keenness one needs not be surprized at in this time of bitter persecution, and when probably the author wrote, just when the loss of Mr. Renwick was fresh upon his spirit. Those and other particulars I have omitted, and given as short and distinct an abstract of matter of fact as I could. Wodrow, p. 630.

Fountainhall observes of this Case, vol. 1, p. 495, of his Decisions, as follows:

"February 1. Mr. James Rennie, head of

the field-preachers, mentioned 18th October, 1687, was this day taken in Edinburgh. They were not seeking him, but for some unfree goods that were stolen from the customers; and he suspecting they were seeking him, bolted the door and shot a pistol, which made him to be apprehended, and then some knew him. On the 3d of February, he was examined before the privy council, and impudently disowned the king to be his lawful prince: his pocket-book bearing those he had corresponded with, and particularly one Mr. David Williamson, the meeting-house preacher of that name, was apprehended, and imprisoned; but he denied any converse, so at last was liberated.

"Upon the 8th of February, Rennie got his indictment at the criminal court, and adhered to his disowning the king's lawful authority, or that he was his true sovereign, and called him only a king *de facto* and not *de jure*: and that to give him the absolute power he assumed, was to put a creature in place of the Creator; and that it was unlawful to pay cess to maintain soldiers to suppress the free preaching of the gospel; and that they might meet in arms to protect themselves. He was found guilty of treason by the assize, and condemned to be hanged in the Grass-market on the 10th of February. But to see if he would renounce his principles, and for other reasons, he was reprieved till the 17th of February, on which day he was executed; and it is thought he would have been spared, had not the people talked broadly that he met with favour as a secret Jesuit. What he owned appeared to some to be no more than what Mr. Samuel Rutherford's *Lex Rex* says, and Naphtali, and *Jus populi Vindicatum*, &c. and other Presbyterians own the same, when they have power and may do it without hazard. He seemed to die composedly."

361. Proceedings against Mr. JOHN HARDY, Minister, at Gordon, for Treason: 4 JAMES II. (of England) A. D. 1689.* [Now first published from the Records of Justiciary at Edinburgh.]

CURIA JUSTICIARIE, S. D. N. Regis tenta in Prætorio Burgi de Edinburgh, decimo tertio die mensis Februarij, anno Domini millesimo sexcentesimo octuagesimo octavo, per nobilem et potentem comitem Georgium comitem de Linlithgow, Justiciarium Generalem, et honorabiles viros dominos Johannem Lockhart de Castlehill, Rogerum Hog de Harcarss*, Patrium Lyon de Carss, et Johannem Murray de Drumcairne, Commissionarios Justiciarj dicti, S. D. N. Regis.

Curia legitime affirmata.

Intran.

Mr. John Hardy, Preacher.

INDYTED and accused, That wher, not-

* He was turned out of the Court of Justiciary on the 1st of March following. See 2 Wodrow's History of the Sufferings of the Church of Scotland, 627.

withstanding be the common law, lawes, and acts of parliament of this kingdom, and constant practice thereof, particularlie be the 43d act, 2d parliament, king James 1st, it is statute and ordained, that all leasing makers, or tellers of them, which may engender discord betwixt the king and his people, shall tyne their lives and goods to the king; and be the 83d act, 5th parliament, king James 5, the forsaide act is revived, and ordained to be put to execution in all poynts; and be the 134th act, 8th parliament, king James 6, it is declared, that great harme and eivill troubles have occurred through wicked and licentious publick and privat speeches, to the disdain, reproach, and contempt of his majesty, and his proceedings; stirring up his majestie's subjects to mislikeing, sedition, unquyetness, and to cast off ther due obedience to his majestie, to their own destruction. Therfor it is ordained, that non of the subjects, of whatsoever function or

quality, shall presume or take upon hand, privatlie or publiclie, in sermons, declamations, or privat conferences, to utter any false, scandalous or untrue speeches, to the disdaine, reproach or contempt of his majesty, or to meddle in the affairs of his highnes and his estate, certifieing the contraveeners, that the lawes and paines contained in the acts of parliament against leasing makers, shall be execute against them with rigor, to the terror of others to doe the lyke; and by the 205th act, 14th parliament, king James 6, all the forsaid acts are revived and ratified, and ordained to be published and put to execution; and accordingly that none might pretend ignorance, by a publict proclamation, by order of privy counsell read and published in all the severall parioch churches of this kingdome, immediately efter divine service, this instant year, the forsaid lawes and acts of parliament wer expressly repeated and declared, and all the liedges, under the paines and penalties therein mentioned, wer expressly discharged of leasing makeing, midleing in matters of state, or telling false names; neverthelesse it is of veritie, that the said Mr. John Hardy, having shaken off all fear of God and regard to his majesty's lawes, did, in a sermon preached by him in the printing-house in Edinburgh, upon the first sabbath of October last, take upon him to meddle in his majestie's affairs, in matters of state and government, and notwithstanding of the great clemency that his majesty had shoven to him and these of his professione, in allowing them the free exercise of their religion according to their own persuasion; neverthelesse, it is of veritie, that the said Mr. John Hardy, having shaken off all fear of God, did envy against that universall ease which his majesty has declared he doeth all his subjects, in matters relateing to their conscience, and did endeavour creat jealousies and misapprehensions in his hearers, to misconstrue and contemn his majestie's proceedings, telling them that they ought to be sory that others besides themselves did enjoy that freedome, and that no true Presbyterian would consent to allow liberty of conscience to any other persuasion than their own, endeavouring to incite to sedition, and to oppose his majestie's counsells, notwithstanding it be expressly provyded by his majestie's proclamation, allowing these dissenting ministers to preach that in ther sermons, they doe not take upon them to raise any dislyke of his majestie's person or government, in the hearts of their hearers, by all which the said John Hardy has committed, and is guilty of the crymes of leasing making and leasing telling, misconstrueing his majestie's proceedings, mideling in the affaires of his highnes and his estate, stirring up the people to dislyke of his majestie's government, and to sedition and unquyetness, and is art and part of these crymes, which, being found be ane assyse, he ought to be punished with the paines of death and confiscation of moveables, to the terror and ex-

ample of others to committ the lyke herefter.

Sic Subscribitur, THO. GORDONE.

Persewer.—Sir John Dalrymple, younger, of Stair, his Majestie's Advocate.

Procurators in Defence.—Sir Patrick Hume, Sir David Thoires, Mr. James Grant.

Sir Patrick Hume, for the pannall, alwayes denying the indictment and haille members therof, and qualifications, alleadges, that it is very well knownen that the defender is a man of most peaceable principles and undoubted loyalty, and well affected to the government, and has given many testimonies therof, and particularly during the time of the English usurpation, and when the earle Glencairn, Middleton, and Kenmiur, wer in the hills, and gathered together all the forces they could for the king's service, the defender was very instrumental in levieing a troupe of horse, that was commandit by Pringle, of ———, who was then under the command of sir Arthur Forbes, now viscount of Granard, and the defender should have been cornet to the troupe himself, and did send his brother Nicoll Hardy to give them intelligence, and furnish them with amunition and all necessars, which troupe did verie good service to the king at that tyme, and albeit the defender did nothing but what he conceived himself in law and conscience obleidged to doe, out of respect to his countrey and loyalty to his prince, and would have done much more if it had bein in his power, yet he humbly conceaves what he did in that affair at that exigence and circumstance of tyme, when the kings were almost ruined, was a convincing evidence of his affection and loyalty to the king, and his late majestie's happy restauration the defender has alwayes lived most peaceably and regularly, and when others did withdrawe from the publict ordinances, he alwayes kept the church, so that it is not to be imagined that a man of his peaceable principles and loyalty would have endeavoured to have created jealousies and misapprehensions in his majestie's subjects, or would have misconstrued his majestie's proceedings, and stirred up the people to a dislike of the government, or to sedition or disquyetnes; and as to the indytment, it is answered, that the expressions lybelled, which is alleadged the defender had in his sermon, telling his hearers that they should be sory that others besides themselves did enjoy that freedome, and that no true Presbyterian would consent to allow liberty of conscience to any other persone than those of their owne persuasion, doeth not fall under the acts of parliament lybelled, nor doe they inferr the cryme of leasing making.

1. Because ther is nothing in these expressions of disdain, contempt or reproach of his majesty, nor did the defender midle in the affaires of the king or his estate, seeing ther is no mention made of the king, estate or government, and seeing the expressions lybelled doe

properlie concern religion, and neither the state nor government, they cannot fall under the acts of parliament lybelled upon in relation to leasing making.

2. The subject of the expressions lybelled is not against the standing law, for any of the Protestant religion to be sorrie that others besides themselves did enjoy the freedom, and that no true Presbyterian would consent to liberty of conscience, is not against a standing law, and therfor the expressions cannot import a cryme, far less the cryme of leasing making.

3. To be sorrie that any other should enjoy that freedom that they did enjoy, and that no true Presbyterian would consent to allow liberty of conscience to any other persuasion than their own, can import no more than this, that a person who has such expressions doth wish that all were of his opinion and his religion, and it is very ordinar and naturall for every man to wish that all the world were of his opinion and religion, which was never looked up as a cryme; and albeit these expressions should import a discourse against tolleration, as they doe not, yet ther has bein many books printed in England and Holland, and other places, for tolleration, when ther was no tolleration allowed by authority, and against tolleration when it was allowed, and yet neither of these was punished as a cryme, nor the authors of the books challenged, as having acted or done any thing against the government, this being looked upon only as ane opinion problematick, having many eminent devins, both for the one opinion and the other.

4. Any expressions that may admitt of ane innocent sense and construction, cannot import a cryme, seeing crymes are not presumed, unless the expression can admitt of no other sense nor construction than that which inferrs a cryme, but the expressiones lybelled may admitt of ane innocent sense and construction; for to be sorrie that others besydes themselves did enjoy that freedom, may be understood of a privat sorrow of heart, which cannot pre-judge the government, and that no true Presbyterian would consent to a tolleration, implys only ane opinion, which is no cryme. For if a member of parliament should vote against tolleration, it would not be imputed to him as a cryme, or if any man should be asked the question if he would consent to a tolleration, and if he should answer he would not, in respect of the standing laws, it would be no cryme, and therfor seing the expressions lybelled may admit of ane innocent sense and construction, and agreeable to the standing lawes, it cannot import any crime.

5. Certain particular expressions in books, sermons, or ordinary discourses, cannot be made use of to prove a parties opinion, farr less to inferr a cryme unles the whole book, sermon, and discourse be considered complexlie together, because one expression doeth interpret and explain another, and what has bein the parties meaning, and it offred to be provine, that if the defender's sermon be complexly to-

gether, it was a most loyall sermon, and so far from envying against his majestie's clemence in granting the individu and tolleration, that he told his hearers that they ought to thank God that he had put it in the king's heart to give a tolleration for the free exercise off religion, and did most cheerfully and cordially pray for the king.

6. The expressions being lybelled copulative, viz. that they ought to be sorrie that others, besydes themselves, did enjoy that freedom, and that no true Presbyterian would consent to allow liberty of conscience to any other persuasion then their owne, if the expressions did inferr any cryme, as they did not, they most be proven copulative distinctlie and specificallie in the very words they are lybelled; so that if any pairt of the words or the lyke words should be provue, it is not relivant, for witnesses cannot be judges of the sense of words and expressions, for that which the witnesses may think to be like words, or to the same sense of words and expressions, for that which the witnesses may think be like words or to the same sense, the lords of justiciary may think they did import another sense, in respect of all which the indytment ought not to be put to the knowledge of the inquest.

His *Majestie's Advocat* oppones the lybell and dittay, and insists particularlie upon the pannall's meddling in his majestie's affaires, and matters of state and government, which, by the express act of parliament, is declared to inferr the pain of leasing making, which is death, and ther is no nation so rude but does observe this pollicie to inhibit and restrain licentious speeches, and meddling into the actings or deliberations of a state, and by the custome of most nations, even curiosity, wher no designe appears, is constructed to be attempted *malo animo*; and if the prying in arcana regni be prohibit, much more the opposing, counteracting, and disclameing against the same, especiallie in sermons or popular convocations, and therfor the 134 act, 8 parliament king James 6th, does justly charge the great inconvenients that fall unto the kingdom by the licentious speeches of subjects taking upon them to censure, oppose, to give characters upon the proceedings of state and his majestie's affaires; and that wise and prudent prince duely foreseeing that meddling in sermons with matters of state or government, would be fatal to the peace and quyetnes of the kingdom, which future experience, during the late troubles, did sufficiently evince that all rebellions and seditious motions, by which last both the monarchy and the kingdom were ruined, wer promoted and vented from the pulpits, and the people induced to misconstrue, oppose, and at last with armes to resist the determinations and resolutions of the soveraign authority and government, and therfor in the narrative of that act, stirring up of his highnes subjects to mislikeing sedition or unquyetnes, are stated as the necessar and unavoidable effects and conse-

quences of licentious speeches, and therfor in the statutory part, whosoever in sermons or other declamations shall meddle in the affaires of his highnes and his estate, are punishable by death; so that simple meddling in the matters of state, and opposing, disuading, or counteracting, doe inferr this cryme and punishment, and therfor it is answered to the particular defences, that tho' the king wer not mentioned, or any thing directly against his majesty, yet the meddling in his majestie's affairs is sufficient.

It is replied to the second, third, and fourth defences, That they do proceed upon a mistake, as if the words lybelled were not relivant to infer the conclusion of the lybell, except the expression wer against standing law, and that they wer but the privat sentiments and persuasions, either of the Presbyterians in general or of the pannall in particular, and it could be no cryme in any man in a parliament to refuse to confurr with the tolleration. It is replied, that the meddling and opposing infers the cryme, suppose the matter itself wer lawfull or allowable; and albeit a member of parliament, or any person requyred, might refuse their consent or concurse to tolleration; yet in those cases, the member of parliament or party requyred was in his duty, and this was no meddling with matters of state or the king's affaires; but after his majesty, by a public proclamation, had signified his royal pleasure to grant and allow ease and libertie to his subjects, in matters relating to their consciences, and that by vertue of that same proclamation, the pannall and others of his persuasion had the liberty and freedome of the exercise of religion in that way they thought right, it was not only ungrate and undutyfull, but the meddling in a matter of state, after a public proclamation, especially upon designe, and efter conferences, and falls directly under the words and meaning of the statute; and the consideration of that proclamation was without the pannall's sphere, especially in the pulpit; and as the law has been so jealous of ministers meddling in sermons, so ther is nothing of greater importance to the peace and quyet of commonwealths: and it is replied to the fifth, that the expressions mentioned or either of them, are sufficient to infer the pannall's having medled in matters of state, viz. That he told his hearers they ought to be sorie that other persuasions did enjoy that same liberty which they had, or that it was the Presbyterian principle to allow no tolleration to others, or not to consent to take off any lawes that might impeded them; and albeit matters of opinion or persuasion do not generally amount to crymes, yet the venting of opinions at a tyme when the state and government have enacted or determined the contrair, it is not a meer matter of persuasion, but a meddling, opposing, or counteracting; and suppose the pannall might saiffie have signified his own sentiments and the sense of the Presbyterians, if he had bein called or requyred by authority, but the ultronious and

officious obtruding and imposing the same upon his hearers, is a contravention in the direct termes of the act of parliament, and expresslie contrair to that same proclamation of toleration by which the pannall was allowed to preach, which bears that nothing should be preached or taught which may any wayes tend to alienat the hearts of the people from the king or his government, and the finding fault with the tolleration, because it was extended to others as well as to Presbyterians, did tend to alienat the hearts and take off the thankfulness which was due to his majestie for that measure of government.

2. The pannall's meddling in matters of state was aggravate by a proclamation, dated at Edinburgh, the fyft of ——— 1687, before the pannall's sermon, and the indulgence in which the particular act of parliament founded upon is *ad longum* exprest, and the hazard and penalties thereof fully mentioned, so that it was ane avowed and deliberat contravention, to treat and counteract, or midle in any matter of state thereafter: wheras it is pretended that the whole sermon must be taken complexlie, and that the pannall did exhort his hearers to thankfulness to the king; that the pannall in the tract of his life had given evidence of his loyal inclinations and moderat practices. It is replied, that *malum est ex quolibet effectu*, and suppose ther had been some expressions that have imported loyalty in the preaching, yet these can neither attone nor excuse other parts of that sermon, which was direct meddling with and opposing matters of government; and where a cryme is clearly inferred, neither the tract of a man's life, nor expressions at another tyme, can take off the guilt inferred, by the direct contravention of a law introduced for utility, and the universal securitie and quyet both of the people and government; but on the contrair, the danger of this crime requyres that the relevancy should be sustained, even against a person, who in other thing was not culpable; and his majesty is the dispenser of his own grace and clemency, in which he hath exceeded the expectations and hopes of those of the pannall's persuasion, but in a tryal the relevancy of the lybell being directly founded, both in the words and the designe of the act of parliament, ought to be sustained, and the defences repelled.

Sir David Thoirs, for the pannall, duplyes, That the former defences proponed for him are repeited and opposed, and which are no wayes eleided by the replies made therto by his majesty's advocat; and furdur adds, that the 134 act, 8 parliament king James 6th, wherupon the dittay is founded, can never be understood to be contraveened by the expressions mentioned in the dittay, both the title and the narrative of the act of parliament being allanerlie anent, the sclanderers of the king, his progenitors, his estate and realm, and nothing of either sclander, injurie, or reproach, can be inferred from the expressions lybelled, either against his majesty, his progenitors, or government;

and all expressions or words being only *judicia animi*, whatever expressions do flow from a person of unquestionable and untainted loyalty and obedience to his prince, and peaceable and obedient inclinations to the government, even in the greatest temptations and tumult, must always be supposed and presumed to have proceeded from a loyal and obedient principle, and must be interpret, and even stretched according to the opinion of all lawyers to ane favourable construction and interpretation in favours of such a loyal and faithfull subject, as the pannall is known to be.

It is impossible that a single sentence or expression in a sermon, or any long continued discourse, can be pickt out *separatim et per se*, to be foundation of ane indytment against the speaker, unless the whole, at least the most part of the sermon or discourse, wer condescended upon and instructed, or that in fortification of the expressions condescended upon, my lord advocat would alleadge and offer to prove, that the current and designe of the pannall's baill sermon, at that tyme, had ane tendence to disloyalty and sedition, and which his lordship cannot doe, because it is positivlie offered to be proven, that the whole strain and scope of the pannall's discourse the day lybelled was most loyal, and the scope thereof directed allanerly to excite the people to thankfulnes, first to God, and then to his sacred majesty, for his royal indulgence granted to them; and how can these two consist together, that a person of the pannall's loyalty ane piety should both bless God himself and exhort the people to bless God, and that the king for that individual indulgence, and yet to repyne and murmur against the same, this importing no less than a dounright mocking of God to his face.

3. If single sentences in sermons and continued discourses should be sustained as a foundation for dittays, ministers might be indyted for blaspemy, by persons who heard only the latter part of a sentence; as for example, if a minister should say, the fool hath said in his heart there is no God, a person heareing the last, but not the first words of that sentence, might accuse the preacher of blaspemy.

Wheras my lord advocate replies, that by the forsaid act of parliament, the simple midling with matters of state is punishable by death, and that the expressions doe undoubtedly import a middling, &c. It is duplyed, that all laws and constitutions are to be interpret favourably for pannalls, and according to the presumed meaning and intention of the lawgivers, and whose intention in this act is evident, both from the title and narrative of the act, and it cannot be pretended that the pannall is guilty of any thing relative to the title or narrative of the act.

2. The word medling, in this act, can only be interpret as to sclanderous and lying, or designed medling, in order to stirr up sedition; otherwayes all persons talking or discoursing anent any lawes, proclamations, or matters of

state, might be crimminallie indyted as medlers, without distinction, whether they wer owning or justifying, or whether they wer reclameing against or complaining of any such law or proclamation, this act being against all medlers in general, without any distinction whatsoever; and it is clear that the medling understood in this act, is only understood of those who, *malo animo*, make curious inquiry in matters of state, which cannot be presumed against the pannall. Whereas the reply bears, that the pannall did not only medle, but actually oppose the proceedings of the government, and did actually stirr up the people to dislyke thereof, by the saids expressions. It is duplyed, that the former defences and reply are opposed, and the expressions lybelled (and which are altogether denyed) can never be interpret to inferr against the pannall, the stirring up the people to dislike against their prince, because his regrating of the extent of the indulgence, was no complaining against the same, seing he did frequently bless God for the same; and his saying that Protestants would not consent, &c. can inferr no cryme, seeing the pannall did at that tyme exhort them all to a submissive obedience and acquiescence in his majesty's lawes and government, and to be thankfull for the indulgence; and wher universal obedience was given to the indulgence and proclamation, by a general submission and acquiescence; and wher the pannall did expressly preach and enjoyne the same, what could the government be concerned in this, that the pannall was sorie that others of different persuasions wer as sorie, that the Presbyterians enjoyed that priviledge as the Presbyterians were that they enjoyed it; and ane minister declairing his hope and expectation of his hearers adhering to their principles, can never be stretched any further than his own opinion; and ministers declairing their opinions in pulpit, wher ther is no prejudice done or intended to the government, can only be repute as opinions.

Sir Patrick Hume farder adds, that the meddling mentioned in the act of parliament cannot be understood of every medling, but only medling contrair to a standing law, so that if the subject matter to which the expressions relate, be not against the king, the same cannot import a cryme, far less a capitall cryme, as leasing making; and it cannot be pretended, that the subject of the expressions lybelled, is against any express lawe, and wher ther is no law, ther can be no transgressions.

2. As to the proclamation reviveing the act of parliament, ther being no more designed by the proclamation but only to be ane intimation to the liedges, that that act would be put to execution, it can have no more effect than the law itself.

3. As to the other proclamation, the 5th of October, 1687, it is after the tyme lybelled, that the defender is alledged to have hade thes expressions, and it is so far from being ane ar-

gument against the defender, that rather it makes for him; for being after that tyme, it is a clear evidence that it was not designed that any expressions preceding that time should be punished as a cryme.

4. The expressions being lybelled conjunctive, the lybell now cannot be divyded; and the expressions cannot be alternative found relevant o infer any cryme.

5. *Et separatim*, if the forsaid expressions could import any crime, as they cannot for the reasons above mentioned, yet by the second act, second session of first parliament Charles 2, it is expressly provyded, that if any person shall by wryting, printing, praying, preaching, lybelling, remonstrating, or by any malicious and advysed speaking, express, publict or declare any words or sentences to stirr up the people to hatred, or dislike of his majestie's royal prerogative and supremacy, in causes ecclesiastick, or of the government of the church, as established by law, that every such person so offending, and being legally convict thereof, are declared incapable to enjoy any place or imployment, civil or ecclesiastick, within the church or kingdome, so that seeing the forsaid expressions can relate only to his majestie's prerogative, and supremacy in causes ecclesiastick and government of the church; if they did import any crime, as they did not, they could only fall under the forsaid act of parliament, which inferrs only ane arbitrary, and not ane capital punishment; and albeit be the said act, it be lykewayes declared that the party guilty shall be lyable in further paines as are due by the law in such cases, that can never be extendit to capitall punishment. It being a principle in law, and the opinion of all layers, that wher ane arbitrary punishment is imposed by a law, albeit it bear the forsaid clause, yet the cryme can never be punished by a capitall punishment, thes paines being inconsistent, for it wer absurd to say that a man should be declared incapable for a cryme, and that lykewayes he should be declared incapable for a cryme, and that lykewayes he should lose his life for the same cryme, so that the forsaid clause in the act of parliament, that the offender should be lyable in what farder paines is due by the law, can only be understood of other arbitrary punishment that my be inflicted by another law, if any be; but seing ther is no other law inflicting any other punishment in relation to crymes against the king's prerogative in matters ecclesiastick, but only that the defender should be declared incapable of any publict office. If the expressions could inferr a cryme as they dont, no other punishment could be inflicted upon the defender, but to be declared incapable of publict

office, and the capital punishment of leasing making.

My Lord *Advocat* tryplies, that the proposition of the lybell, is the express words of the law, that meddling in the king's affairs and matters of state, infers death, the subsumption is a clear, the preaching being after his majesty had signified his pleasure by a publict proclamation, relateing to the indulgence and tolleration, which the pannel could not but know, that being the warrant of his own preaching, and ther is no necessity to alleadge that the meddling was by words inferring a cryme or sedition, for crymes or sedition, without meddling in matters of state, are punishable by themselves, and therfor meddling in state most import that even wher ther was no cryme upon the matter, but only the counteracting of the measures of government was forbidden in sermons, or to any person without his sphere. It is tryplied to the 2nd act, 2nd session first parliament king Charles 2nd, that the last part of that act founded upon, relates only to his majestie's supremacy, and the government of the church by bishops, and does not relate to the meddling or counteracting of any thing actually done by his majesty or the state, and therfor has no relation to this case, but even by that act of parliament ther is no former paine or penalty remitted, but on the contrair the law bears expressly, and to be lyable to such farder paines as are due by the law, in such order as the privy councill shall think fitt; and the reason why ther are first arbitrary pains, and thereafter the general clause of all paines enacted by former laws, which includes capitall paines, is because by the subsequent words, it is expressly provyded, that no person shall be punished for the offences forsaid, except by order from his majesty or the privie councill, and therfor since the king's advocat could not insist without a warrand, ther was reason for the distinction of the punishment, that the contraveener should be incapable to enjoy publict place or imployment, without any speciall order from his majesty or the councill. But upon a speciall order all the paines enacted by any law are expressly salved and imposed, and in this case ther is ane express letter from his majesty to the privy councill, and a warrand from ther lordships to the king's advocat to insist.

The lords justice generall and commissioners of justiciary, having considered the lybell persewed he his majestie's advocat, against Mr. John Hardy preacher, and haill debate theranent; they find the expressions, as they are lybelled, does not inferr the cryme mentioned in the acts of parliament specified in the indictment.

Sic Subscribitur.

362. Proceedings in the House of Commons, against ROGER PALMER, Earl of CASTLEMAINE,* for High Treason, in going Ambassador to Rome: 1 WILLIAM & MARY, A. D. 1689.

THE Attorney General [sir George Treby] having, on Saturday the 26th of October, 1689, informed the House of Commons, that the earl of Castlemaine, sir Edward Hales, and other prisoners of the Tower, were brought by their Habeas Corpus to the Hall to be bailed, de-

* See his Trial for High Treason, A. D. 1680, vol. 7. p. 1067.

Of Castlemaine's embassy to Rome, Welwood (Memoirs, p. 183,) writes:

“To bear the public character of ambassador to the Pope, was likewise an open violation of the laws: but so fond was the governing party about king James to show their new acquired trophies at Rome, that the earl of Castlemaine was dispatched thither extraordinary ambassador, with a magnificent train, and a most sumptuous equipage. What his secret instructions were, may be partly guessed by his public ones, which were, to reconcile the kingdoms of England, Scotland, and Ireland, to the holy see, from which they had for more than an age fallen off by heresy.

“Innocent 11. received this embassy as one that saw further than those who sent it. The ambassador had but a cold reception of the holy father; and none of the cardinals, but those of a particular faction, and the good-natured Cardinal of Norfolk, took any further notice of it, than good manners obliged them. The court of Rome were too refined politicians to be imposed upon with show and noise; and knew the world too well, to expect great matters from such hasty, ill-timed advances as were made to them. Not only so, but Innocent having an aversion in his nature to a faction he knew king James was embarked in, which he never took pains to dissemble, was not over-fond of an embassy from a prince who was in an interest he had long wished to see humbled. King James met with nothing but mortifications at Rome in the person of his ambassador, which occasioned his making as short a stay as was possible. In which may be seen the vast difference there was at that time betwixt the politics of Italy, and those of a head-strong party in England. And however the world has been imposed upon to believe that the Pope's nuncio at the English court, who is since made a cardinal, was an instrument to push on things to extremities, yet certain it is he had too much good sense to approve of all the measures that were taken; and therefore desired often to be recalled, lest he should be thought to have a hand in them.

“Although the earl of Castlemaine was pleased, upon his examination before the par-

liament, to say that his embassy to Rome was only such as is between two temporal princes, about compliment and commerce; yet father Warner, in his manuscript history, quoted by a learned author†, gives us another account of it, in these words: things being thus settled, says he, within the realm, the next care his majesty had, was to unite his countries to the obedience of the bishop of Rome, and to the Apostolick see, which had been cut off by heresy about an age and a half before. To try the Pope's inclination, in the year 1685, he sent Mr. Carryl thither, who succeeding according to his wishes, and being recalled, the earl of Castlemaine was sent the next year, as extraordinary ambassador to the Pope, in the name of the king and the catholics of England, to make their submission to the holy see.

Castlemaine had several audiences of the Pope, but to little purpose; for whenever he begun to talk of business, the Pope was seasonably attacked with a fit of coughing, which broke off the ambassador's discourse for that time, and obliged him to retire. These audiences and fits of coughing continued from time to time, while Castlemaine continued at Rome, and were the subject of diversion to all but a particular faction at that court. At length he was advised to come to threats, and to give out that he would be gone, since he could not have an opportunity to treat with the Pope about the business he came for. Innocent was so little concerned for the ambassador's resentment, that when they told him of it, he answered with his ordinary coldness, ‘E bene, se vuol andersene ditegli adunque che si levi di buon matino al fresco e che a mezzo giorno si repositi, per che in questi paesi non bisogna viaggiare al caldo del giorno.’ Well! let him go; and tell him, it were fit he rise early in the morning, that he may rest himself at noon; for in this country its dangerous to travel in the heat of the day.

“In the end, he was recalled; being able to obtain of the Pope two trifling requests only, that could hardly be denied to an ordinary courier; the one was a license for the Ma-

† Dr. Glee's Animadversions on the Jesuits' Memorial for the intended Reformation of England under the first Popish Prince. London, 1690.

the House directed the governor to bring him up (as he did) the Monday following; and then the Speaker [Henry Powle] said to this effect:

reschal d'Humiers's daughter to marry her uncle; and the other, a dispensation of the statutes of the Jesuits order, to father Peters, to enjoy a bishoprick: the want of which, says my author, was the reason that the archbishoprick of York was kept so long vacant.

"Though the Pope carried himself in this manner towards the English ambassador, yet the Jesuits paid him the highest respect imaginable; which did him no service with the old man, for he and that order were never hearty friends. They entertained him in their seminary with the greatest magnificence; and nothing was wanting in nature or art, to grace his reception. All their stores of sculpture, painting, poetry, and rhetorick, seem to have been exhausted upon this entertainment. And though all the inscriptions and emblems did center upon the triumph of the Romish religion, and the ruin of heresy in England, yet care was taken not to omit such particular trophies and devices, as were adapted to their new acquired liberty of setting up their public schools at London. Among a great many other panegyrics upon king James, the following distich was placed below an emblem of England.

'Restituit Veterem tibi Religionis honorem
'Anglia, Magnanimi Regis aperta fides.'

"The open zeal of this magnanimous king has restored to England its ancient religion.

"There was also this inscription put round king James's picture:

"Potentissimo et Religiosissimo
Magnaë Britanniaë

REGI

JACOBO II.

Generosâ

Catholicæ Fidei Confessione

Regnum Auspicienti

ET

INNOCENTIO XI. P. M.

Per Legatum

Nobilissimum et Sapientissimum

D. Rogerium Palmerium

Comitem de Castlemain

Obsequiam deferenti.

Collegium Romanum

Regiæ Vertutem Insignia Dedicat.

"To the most Potent and most Religious James the Second, King of Great Britain; beginning his Reign with the generous Confession of the Catholic Faith.

AND

Paying his Obedience to Pope

INNOCENT XI.

By the most Noble and most Wise

D. Roger Palmer, Earl of Castlemain,

The Roman College

Dedicates

These Royal Emblems of his virtues.

"My lord, the House having understood that you went ambassador to Rome, and also took your place at the board as a privy-councillor, without taking the oaths (which are

"In the great hall the ambassador was harangued by the Rector of the College in a Latin speech; which, to show the vain hopes they had of king James and their own fortune at that time, is placed in the appendix, with a translation of it into English: referring the reader for the rest of that solemnity, to an ingenious gentleman that was then upon the place, and has given a particular account of it.

"But yet it may not be amiss to mention what the same gentleman tells us, of a device that related to king James's having a son; which was, a lilly, from whose leaves there distilled some drops of water, which as the naturalists say, becomes the seed of new lillies; and the motto was, "Lachrimor in Prolem:" I weep for children. Underneath was this distich:

Pro natis, Jacobe, gemis, Flos candide Regum?
Hos natura tibi si neget, Astra dabunt.

Dost thou sigh for children, O James! thou best of Kings! If nature denies, Heaven will grant them.

"There was one inscription more this author takes notice of; which being one of the most unaccountable things of that kind, afforded matter for the wits of Rome to descant upon. Though the words are ill chose, and strangely harsh, yet it is certain the fathers had a good meaning in them; and they refer to king James's influence upon his brother to turn Roman Catholic at his death. The inscription runs thus:

JACOBO Secundo Angliæ Regi

Quod ipso Vitæ Exemplo preunte,

Et impellente Consiliis,

Carolus Frater et Rex

Mortem obierat admodum piam:

Regnaturus a tergo frater

Alas Carolo addidit;

ET

Ut Cælo dignum,

ET

Dignum se Rege Legatum, eligeret,
Fratrem Misit.

"To king James II. King of England; for having by his example and his Counsel, prevailed with Charles his brother to die a pious death.

And being to succeed him,

"He gave wings to Charles; and that he might make choice of an ambassador worthy of Heaven and himself, he sent his brother.

"I will not pretend to give the nice sense of these words; and though I would, I cannot, there being such a perplexity in them. But for the expressions that follow, I may venture to give them in English, though they seem to be as much out of the ordinary road as the former.

great crimes, and against law) they have sent for you to know what you have to say for yourself."

HIS LORDSHIP'S ANSWER.

It cannot, Mr. Speaker, but put me into more than an ordinary confusion, when I find myself in this place as a criminal; especially,

"Nuncii ex Anglia proceres
Retulerunt Regibus aliis Jacobum Regnantem.
Cœlo

Primus omnium retulit Carolus.

Nec Immerito;

Reges alii Legatos suscipiunt

Mittunt que Principes,

Legatos Reges Deum Excipere decuit;

Jacobum mittere.

"English noblemen were sent to other kings, to acquaint them with king James's accession to the crown: but Charles first of all brought the news of it to Heaven.

"It was but reasonable,

For Kings to send and receive Princes as Ambassadors:

"It became God Almighty to receive, and James to send no ambassadors but Kings."

In his Appendix, No. 18, he gives (from *Nouveau Voyage d'Italie par Monsieur Misson*, edit. 3. tom. 2. pp. 259, 260.) 'The Harangue of the Rector of the Jesuits College at Rome, to the Earl of Castlemain, upon his Embassy to the Pope.'

"In tantu strepitu Mundi plaudentis gratulantisque tuo in urbem adventui, hoc est, immortalibus JACOBI II. Magnæ Britanniae Regis in Catholicam Ecclesiam meritis, Gregorianum hoc Palladis Athenæum, nec debuet tacere, nec potuit Quamobrem, ego Literariæ hujus Universitatis nomine, primò gratulor INNOCENT XI. felicitati, quòd ipso regnante, Pontificio accesserit Diademati Augusta hæc & Triumphalis Corona; unde illud cum Apostolo usurpare jure Meritò valeat, gaudium meum, & Corona mea. Hunc lætissimum ferre Mortalibus Diem, longissimi tævi spatio distulerunt superi, tum ut diuturnis Terrarum votis ingentia hæc Cœli dona responderent, tum ut simul invenirent regnantem in Anglia Jacobum II. Romæ, Innocentium XI. Gratulor quoque Christiano Orbi, necnon Catholicis Regibus, quod tanto Dominatore Britannorum sceptrâ gerente, tam grande advenerit, & ipsorum Coronis adversus Christiani nominis hostes munimentum, & Orthodoxæ Fidei ornamentum. Imminent quippe ab invictissimi Regis Classibus, tum Lybicis prædonibus, tum Asiæ & Palestinæ Littoribus, flammæ procellæ, magis metuendæ quàm Maris. At tibi, Oceani Regina Magna Britannia, quæ à nostro olim Orbe divisa, nunc gemini facis commercia Mundi; quid non liceat ominari faustitatis sub tantu Principe. Erige spes; erige vota; nec timeas si maxima, sed nisi maxima. Non libet in die hac faustissima commemorare quàm Ingubres passa fueris unius ampliùs sæculi spatio, toto Orbe terrarum

seeing, through the whole course of my life, the glory and welfare of England has been my chief aim and endeavour. You are pleased, Sir, to lay so great a charge upon me, that, without shuffling or impertinence, I might ask time to consider it; yet since I well know how much you value your time, and since time also may make what I say suspected more of

admirante atque ingemiscente, catastrophas. Sed si hæc una erat via, quâ Jacobus II. Britanniae solium ascenderet, prope est ut exclamen, tanti fuisse. Profectò invidet tibi posteritas, non modò præsentiam temporum felicitatum, sed & præteritorum calamitates tam grandi mercede redemptas: eaque, quibus nunc frueris bona, etsi post ingens à te pretium persolutum tibi reddita fuerint non à te coempta arbitrabitur, sed quadam superum prodigentiâ dona data. Tibi demum gratulor, præstantissime orator, quod tam faustum diem, & videris in Anglia, et detuleris in urbem. Nam de sapientia tuâ, quâ per eruditissimos libros hæresim profligasti, nihil attinet dicere: nihil de Fortitudine, quâ Carceres ipsos pro Catholica Religione tuenda, non tam pertulisti, quàm decorasti: nil de Prudentia; Nobilitate, cæterisque dotibus tuis. Hoc unum universa tua decora comprehendit, quod ad maximum totius Regni negotium, hoc est; ut splendidissimâ fungereris apud Innocentiam P. M. legatione, Jacobus II. Magnæ Britanniae Rex maximus, te nnum elegit, quia unus dignus erat eligi, alter eligere."

And he subjoins the following translation.

THE SPEECH of the Rector of the COLLEGE OF JESUITS, to his Excellency ROGER Earl of CASTLEMAIN.

"Sir; You must not think this College alone can be mute; and if they could, their silence must be a crime, at a time when this city is filled with universal joy, upon the news of your excellency's arrival; and all places resound the praises of James the second, and the obligations the Catholic church has to that illustrious prince. I, in the name of this learned body, do in the first place congratulate thee, Innocent, in whose reign this flourishing imperial crown is added to the Papal diadem. It is now your holiness can properly use that apostolick expression, my joy and my crown. Heaven has deferred this happy day thus long, that so great a blessing might not be obtained, without long and unwearied prayers; and at last effected, when two such princes as James and Innocent should concur to reign, the one in England, and the other in Rome. What a support have all Catholic kings gained by this accession! what an honour has the orthodox faith received, and what a defence against the enemies of the name of Christ! The thunder of his invincible fleet will strike greater terror into the pyrates of Barbary and the Levant, than storms and waves can do. How highly blest art thou, O Britain! Empress of the ocean; once secluded from the earth, now

artifice than candor, I shall now, without further delay, let you and this great assembly see (where so many of birth and quality are met) how far I am from deserving either censure or reproach. But, Mr. Speaker, before I go further, I must humbly beg these few favours of

mistress of the commerce of the Eastern and Western world! What prosperity mayest thou not hope for, under the reign of so excellent a prince! Raise thy hopes; raise thy courage; and banish all unjust and unseasonable fears. I have no inclination at this time to recount those disasters and calamities of which England has been the theatre for above an age past, to the grief and astonishment of the rest of the world. But if Providence has made these the steps for James the second to mount the throne, I can hardly refrain declaring how cheaply thou hast purchased so great a blessing. It is certain, their present happiness will create envy in succeeding times; and however dear it has cost them, posterity will esteem it more the bounty and profusion of heaven, than a recompence of their sufferings. In the last place, I must congratulate your excellency, who has first seen this happy day at home, and has next been the messenger to bring it hither. I shall not here presume to praise your great wisdom, your learned writings against heresy; that steady courage you have shewn in those many prisons you have honoured for your zeal to the true religion; your prudent conduct, or your other extraordinary qualities: all these are summed up in one; and your character is in fine compleated, by the choice your great master has made of you, to sustain the most considerable affair of his kingdom, the present glorious embassy: in which all the world must own him to be the most competent judge, and you the fittest person."

Mr. Rose relies much upon the mission of lord Castlemaine to Rome, in proof of James's ardent and bigotted zeal for the establishment of Popery in his dominions. See Observations on Mr. Fox's Historical Work, p. 89.

The following account of two Conversations which Dr. Thomas Smith had with the earl of Castlemaine, are extracted from the transcript belonging to Mr. Hargrave, of Dr. Thomas Smith's MS. See the Case of Magdalen College, p. 51, of the present Volume.

"Upon my coming to town, soon after the king's accession to the throne, I went to visit the earl of Castlemaine, with whom I had made an intimate acquaintance in Italy and Turkey, in the year 1668; and discoursing with him about the opposition made by all the true members of the Church of England against the Bill of Exclusion, and then of the great joy they shewed at his peaceable possession of the crown, though he was of another communion; I told him that the Papists in France, and especially the Sorbon and the great bishops, upon the death of king Henry the 3d, opposed the

you. First, That you would pardon all tautologies, or want of method, as beginning perchance in the middle, and ending again where I should have begun. Secondly, That you would not take any advantage at my answers, for I shall be ingenuous to the utmost, and he-

succession of Henry the 4th, merely because he was a Protestant, and kept up their impious league, and would not own him for their king; he answered that the church of England men were infinitely loyal in their principles, practices, and behaviour; but, withall, added, that some of our church were not so, and instanced in my lord Russell, and the other exclusion men, as he called them, who were as guilty as those Catholics in France. I told him, I could not own them to be true sons of our Church. Then he went on and asked me, what I could say for Cranmer and Ridley, and the other Protestants, who, upon the death of king Edward the 6th, set up the lady Jane Grey to be queen, and signed the commission of the duke of Northumberland to head the army then raised to oppose queen Mary's title; which argument I answered. He replied, that what he said was without the least reflection on the loyalty of the present members of the Church of England, or the principles of our Church, concluding that there were ill men of all religions. But, said he, setting aside all further disputes upon that head, Doctor, you are a man of moderation, why now may not there be an accommodation and a reconciliation of the differences between the two Churches of England and Rome? I told him that there could be no terms of reconciliation offered, which we could admit, without violation of our consciences and of the true Catholic religion which we profess.

"*E. of C.* Why the Pope (Innocent the XI.) is a good man, and mighty desirous of an union amongst Christians, and you do not know what condescensions he will make, and what terms he will offer, in order to the effecting so good a design.

"*T. S.* My lord, if you intend to offer only the Sacrament in both kinds, prayers in English, and the marriage of the Secular Clergy, this is not enough, this will never do.

"*E. of C.* How do you know but that more will be offered?

"*T. S.* My lord, give me leave to ask you a fair question; do you believe that the Pope, who, you say, is so good a man, has power to dispense with the Articles and Canons of the Council of Trent?

"*E. of C.* [After some pause, taking time to consider of an answer.] No, said he, I believe he has no such power.

"*T. S.* Then, my lord, all other proposals signify nothing: down with your infallibility; down with the Pope's pretensions to the pastorship of the universal Church, renounce your damning anathemas, which you thunder out against all other Christians, who will not own transubstantiation, and the other articles of

sitate at nothing you shall ask. And lastly, if, through inadvertency or haste, I should say what might shock you, that you would not stand upon the rigour of the words, but upon the sincerity and clearness of my explanation.

Be pleased then to know, Sir, I was so far from seeking this employment, that I did not so much as dream it was designed me; and when I knew it, I used my utmost endeavour to avoid it. My ignorance of the king's intentions appear by this, that, in the year I went to Rome, returning out of the country, according to my usual custom after Michaelmas, I found a Protestant, a person of note, at my house, who told me, that before I spoke with any man, he was to bring me to my lord Sunderland, and from thence I was to go to his majesty; nor would he scarce afford me time to put myself in a tolerable order to attend them. My lord Sunderland soon hinted to me what the king's intentions were; and when I recurred to his friendship, I had this answer, or words to this purpose: that if subjects should refuse their king's service in every thing that was troublesome or *contre cœur*, all kings would be in an ill condition; that my request was

your new creed, established in that council, and then there may be some hope of union; and let there be a free general council called by the king and the other princes of the Roman communion, to reconcile the differences now on foot, and let the Pope be content with his priority of order and ancient jurisdiction.

"E. of C. Now I see you are as fierce, and of as irreconcilable a temper as the rest.

"T. S. My lord, there can be no ground or hope of a reconciliation but this, all other methods are vain and ineffectual.

"So the discourse fell, and we diverted ourselves with the news of the town. T. S.

"Coming to London again, I went to visit, on the 8th of December, 1685, the earl of Castlemain, going then upon an embassy to Rome, and to wish him a good voyage. Among other things I asked him how he would look upon me if I came to see him at Rome, and whether he would protect me. He answered, smiling, that the first day I entered into Rome he would take care that I should be sent to the Inquisition. Upon which I told him, smiling also, that he would be wonderfully kind then to his old friend. Here he fell into a great fit of laughter, out of which having recovered himself, he chid me for having such ill thoughts of a place where was all imaginable liberty for Protestants, and then told me very gravely, that we had known one another in Turkey, wondering that my curiosity and genius had not carried me also to Rome; and that if I would come there during his stay, not only his attendants and servants should shew me all possible respect, but that he himself would do me honour. I told him it was not unlikely but that I might wait upon his lordship the

beyond his power, and that he believed I should find his majesty very positive; and so I did, Mr. Speaker, I will assure you. Nay, to satisfy you yet more fully of my backwardness to this journey; can you think, Sir, that I, that had been at Rome more than once; that had seen the grandeur of so many Roman embassies, and knew they exceeded in splendor and expense three times those to any crown'd head whatsoever, should not be extraordinarily concerned at an employment which had for its subsistence, as the lords of the treasury well know, no other establishment than to Spain or France, which (being 100*l.* a week) amounts only to 5,200*l.* per annum?

Having thus, Sir, shewed you how little fond I was of the thing, let me now, with submission, ask you, what could I otherwise do in my circumstances? For first, I call all that is good to witness, I never heard of law against it, nor know of any to this very day: and yet, on the other side, I was not only commanded by the king, but knew his royal and legal power of commanding the service of his subjects, and most particularly in embassies, as appears by many old examples; nay, by a fatal one in this very century; I mean the case

following year: and nothing indeed but want of money to furnish out the expence of the voyage hindered me from performing that intention.

"In the heat of discourse he fell very foul upon Burnet's History of the Reformation, and said it was a rhapsody and full of lies, and that he could shew in almost every page, great and wilful mistakes. My lord, said I, shew them, and expose him for them; but he instanced only in the story of the emperor Charles the 5th, being reported to turn Protestant before he died, which he said was a lie invented long after his death; that the bishop of Burgos and his confessorins, were put into the Inquisition upon other accounts, as at this very time, added he, there is a Spanish secular priest, one Molinos, otherwise a very holy man, imprisoned at Rome for inventing new-fangled doctrine about the worship of God.

"I asked him what opinion he had of the book of father Crossi, a Franciscan, and one of the queen dowager's priests, then newly published, of the Glories of the Blessed Virgin Mary, Mother of God. He told me plainly (for all the sober Romans were ashamed of the gross absurdities and fooleries of that author) that it was an idle book, that when he first looked into it, he threw it into the fire, that there were ten thousand scandals in it, and that for aught he knew, the book was put out in that priest's name, to render their devotion odious and ridiculous. Here I interposed, and told him, that a great many bigots of the Roman communion maintained the same superstitious and blasphemous phantasies. He replied only, that none could be so silly. Then we fell into discourse upon other matters more agreeable."

of Overbury, to which nobody here, I am sure, is a stranger. In the next place, Sir, what did I go to Rome for? Why only with a letter; with a compliment from a professed and open Catholic king to his holiness, as all princes of that communion do in the beginning of their respective reigns. Besides, Mr. Speaker, as I know no law that forbid my obedience, so I must needs say (and this without cramping, or putting any bounds to the legislative power), that no such law can be made: for, Sir, the pope is a very considerable temporal prince, whose territories border on two great seas, the Mediterranean and Adriatic: if then our merchants should be by storm, or other necessities, driven into his ports; if Englishmen should be surprized by any Roman party as they travel in a neighbouring country, shall our government (not to mention a hundred other greater accidents) want power to send a messenger to ransom and compound for them? What law therefore was there ever yet framed, or can be enacted (let the commerce or intercourse between nations be never so much broken and prohibited) but that a commander in chief, a general, and much more a king, may beat a parley, dispatch a trumpet; nay, send and receive letters as often as occasion does require?

Now, Mr. Speaker, for religion, I neither had any commission concerning it, nor transacted with his holiness about it; and as nobody ever did, or could lay any thing of that nature to my charge, so for some confirmation of it, I will appeal even to the Aqua-Fresca houses of Rome, and to all the Protestant gentlemen of our nation there during my embassy; for though what I tell you, Sir, be a wonder, yet the honourable persons who have resided in those parts, know it to be true, that for a dish of chocolate, or a dish of lemonade, one may know the measures and particulars of an embassy in that city, as well as we do what passes within these walls at our coffee-houses. I am sure my under servants have often smiled at the grimaces and mysteries which my secretaries used in the beginning to make before my audiences; for they have told them, within few hours after my return, almost word by word what had passed. Give me also leave, Sir, to add one truth more, which will assure you that I had no dangerous intrigue in hand; and this is, that notwithstanding his holiness never had the least imagination or thought, but that I was as real and sincere a Catholic as any man living; and the same thing also I can say of all the cardinals, and in fine of the whole court in general; yet none of them (and every Englishman in town knew it) but looked upon me as one, that if any immunity of the crown were in question, or any temporal concern of the kingdom touched, would stand as much in the gap, and be in as diametrical an opposition as any person of the reformed religion whatsoever.

You see then, Sir, both how and why I went; nor have I done any thing certainly to merit any man's unkindness or ill will; nay,

to lay yet further before you the hardship I am under, I shall state you a case not fetched out of old forgotten records, or transacted in an age distant from our's, but of a man attainted in this very house, in the memory of several now sitting, and even whilst I myself had the honour to be a member of it. The case, Mr. Speaker, is Axtel's the regicide; one whose crime, I dare say, my greatest enemies think I abhor in the highest manner; nor do I mention the thing in favour of the criminal, but in honour of his grave and worthy judges. Axtel, you know, Mr. Speaker, was indicted for the murder of Charles the first;* and to shew that he maliciously contrived and abetted it, the king's counsel urged his commanding in the hall at the trial; his placing the centinels all about; and in short, his performing there the whole office of captain of the guard. The prisoner answered, (but pray, Mr. Speaker, let me beg pardon, if the interval of almost thirty years has made me forget his words, I am sure the sense of them I have not. I say, Sir, the prisoner answered) 'My lords, I am under great oppression, I am hardly dealt with. Has Charles the second been so gracious as to pass over the ordinary transgressions of his strayed subjects, and to look upon the obedience of soldiers to their then superiors, as if the authority had been more legal? and shall I now die (who was under military discipline) for that which I must have presently died for, had I not done it; to wit, had I not drawn up my regiment, kept the post ordered me, and performed the other duties, the concourse being great and troublesome?' Upon this the judge replied; 'I confess (considering the king's merciful resolutions) that your argument is strong; it has great weight in it: but, Mr. Axtel, did you no more? Did you only perform the duty of a commanded soldier? Who was it, I pray, that animated the rabble? Who beat the soldiers for not crying 'justice!' Who encouraged spitting in the king's face? And who barbarously reviled and threatened a noble lady, that in the transport of her zeal (when she saw her sovereign abused, when she heard such blasphemy against him, and all this fathered upon the nation) made a noise or stir in the court?' These things therefore, Sir, being proved against him, he was convicted, condemned, and so paid a debt to justice, and to the sacred ashes of that great and just man.

Now, Mr. Speaker, to application: and first (after a little glance on the tenderness of these judges, when any necessity could be pretended) let me, with your pardon, ask you, Shall I suffer as a transgressor of the law, were there any, when I must have suffered by the law, had I refused his majesty's orders and commands? But, Sir, if you demand, Did I no more than carry a letter, or go with a ceremonious 'How d'ye' from the king? I must answer, Yes, and a great deal more too. For

* See his Trial, A. D. 1660, vol. 5, p. 1146.

my house was an asylum, a place of refuge to all distressed or oppressed fellow subjects. If seamen mutinied, or had any contest with their captains, here a reconciliation was made, and here they returned to their obedience; if the captains themselves, fraughted for the Camera, were delayed their money, or misused by under officers, they quickly found redress; and often, by my interest, received more than they themselves expected. And if the question happened about quantity, or how goods were conditioned at delivery, the verdict I am sure went still on their side. Nor was my care confined to Rome only, but reached to all the factories of Italy: for the consuls themselves, nay every private person, found both an easy access to me, and an indefatigable zeal in their concerns: so that the merchants in general that had to do in those parts, were far from being behind-hand in their thankful acknowledgments. Nay, one of the greatest companies in our nation, I mean that for Turkey, not only returned me their thanks very heartily by letter, but did it again by word of mouth after my arrival home.

I am sure, Mr. Speaker, if the employment I submitted to were a fault, I have already not a little suffered for it; for I never put bounds (as our travellers, as well as my own officers, fully know) to any expence that could be imagined for the dignity of the nation. And give me leave to tell you also, Sir, that though the name of Rome may be harsh and ungrateful to your ears, yet what I did was with a good intention, and like a true and faithful Englishman. For had I been sent with a character to Constantinople, where they are Mahometans, or to China, where Gentiles, the eclat or figure which I should have endeavoured to make, would never be considered by you as an honour to their religion, but our country; therefore since it is a disparagement and great reflection to a kingdom, to come below, or short of others, in any thing that is public and of note, I cannot but have at least faint hopes, that you will have some consideration, some opinion of an ambassador, though at Rome, that kept up, to his power, the glory and grandeur of England.

But, Mr. Speaker, not to trouble you longer on the present head, I will end when I have told you this: that if I have done amiss in obeying the king's commands, no consul that has pursued a pirate or banditti at Rome; no private factor that has followed a debtor thither, nor in short, any man that has written so much as one letter to that city, though it were to demand his own, but is a far greater criminal than myself, and lies at the mercy of every enemy, to be indicted as a contemner and breaker of the laws.

Your second charge, Mr. Speaker, is my being a privy councillor, without taking the appointed oaths; to which I can truly say, they were never offered me; though I must also confess (for I shall be sincere with you in every thing) that I believe, nay, that I am

certain, I should not have taken them, had they been offered: so that I do acknowledge the omission a fault against law——

[Here the Speaker, thinking that his lordship had made an end, desired him to withdraw; but being informed that he had not done, he excused the interruption, and then his lordship went on.]

I say, Mr. Speaker, I acknowledge this a fault against law, were there not several things of weight that will, I hope, justify me to you: and here, Sir, I must entreat you not to conceive that I come now to defend, or make good the dispensing power, but only to shew you how necessarily I was driven and induced to the aforesaid omission; for, Mr. Speaker, in controversies and disputes, what can one do, but recur either to his own observation, or to the opinion of learned men, and professors in the science?

In the first place, then, when I began to examine myself as to the right the king claimed and asserted, I saw *non obstantes* deemed legal, which signified to me dispensing: I found the power of continuing sheriffs owned for many ages to be undoubted law, and yet I knew there was a positive statute against it: nay, I remembered an act which I myself had in this house given my vote and consent to, viz. that about 'the Regulation of Carriages and Waggons;' or if this be not the exact title, I must beseech you to pardon my treacherous memory, and it is, I will assure you, the only traitor I ever yet succoured or supported. I say, Sir, I remembered this very act, almost as soon as made, suspended by Charles the 2nd's Proclamation, without the least question or murmur; and I took so much notice of it, as to make even then this reflection (and I do assure you upon my honour it is true) that though our monarchs could not impose and abrogate laws of themselves, yet they had the power, I perceived, to respite them.

In the second place, Mr. Speaker, if I went abroad; I mean, if I consulted the thoughts and sentiments of others, I found not only great men of the long robe, but the judges also themselves declaring in favour of this prerogative; and the interpretation or determination of these sages was always told me to be law, till a new law, or a new explanation, should be enacted. What would you then, Mr. Speaker, have me to do, who was called to the board by the king, who could not in conscience take the oaths, and yet had no reason to think I committed, in not taking them, a crime, seeing the law was thus openly expounded and published?

And now, Sir, since I have been forced to mention my religion, which I know is a legal fault, and of a high nature, I must not forget also to celebrate the goodness of this house, which has pardoned the fault, even in the solemnest way, and by the solemnest act that ever passed since Magna Charta; to wit, the great Act of Oblivion. Give me leave, Sir, to

say this too, for I can justly do it, that being so faithful and so true an Englishman, I neither should, nor could, I am sure, have ever, during my life, offended my country, but in my religion. Pardon also, I humbly beseech you, this digression, and together with it the incoherences and disjunctions all along; nor shall I any ways doubt of it, since you so well know how uneasy and troublesome a long discourse (which my circumstances have now required) must needs be to one that wants both eloquence and practice.

But, Mr. Speaker, to return where I left, and so conclude: how, Sir, I pray you (and I demand it again of you with great respect), could I think the omission, as I said, of the oaths a breach of the laws, when our guides, who had the laws in their keeping, told us explicitly, and without reserve, the said oaths were not necessary? Shall I then suffer, that had neither buoy nor mark to direct me? Certainly no; for if there were a fault, it is not I must suffer, but the judges, and those knowing and deputed pilots, that hung out, it seems, the wrong flag and signal. I have, Sir, but one word more to trouble you with, and this I speak in behalf of all here; nay, in behalf of all the people of England; that if I now undergo your severity, and that single persons (notwithstanding the determinations and judgments of our courts of justice) must be still responsible, no man can be safe, no man can be at rest, for nobody that acts can know (as accidents will often happen) whether he be innocent or guilty.

Mr. Speaker, I am in great disorder for imposing thus on your patience; and especially seeing I must yet presume to do it, one thing more occurring to me, as I hope, for your further service, or at least satisfaction: and it is to let you know how I came to be a prisoner, and why I continued so thus long. Be pleased then, Sir, that I tell you, that as soon as the king first left Whitehall, I thought it decency to go out of town; and therefore three days after I took coach for Montgomeryshire, where of late I used to reside in the summer time. On the borders of that county, at a small corporation called Oswestree, I was first stopped by the rabble, and afterwards detained with a strong guard, at my inn by the mayor; though nobody, as he confessed, made any oath against me; and though he had no orders, as he said, from London for it, nay, after a month's restraint, he denied me my liberty upon bail, notwithstanding two neighbouring lawyers, whom I sent for, assured him he could not justify the refusal by law. I do not, Sir, complain of any incivility, either from him or the people; for I was used with respect enough; but I judge it extremely fit to let you see how the liberty of a subject was wilfully invaded by a magistrate, and how little conscious I was of any guilt, since instead of flying, I went to a place where I was known by every body.

In fine, Mr. Speaker, after a confinement of

seven weeks, I was sent for up, and brought hither by a party of horse; nor was I ever questioned or examined by any body, but kept (upon the suspension of the Habeas Corpus act) at a messenger's house for three months; and when the said act was suspended the last time, I was committed by my lord Shrewsbury's warrant to the Tower, 'for suspicion of treasonable practices.'

[His lordship having ended, retired with the serjeant at arms to his room, where after a little stay, he was sent for in again; and then the Speaker told him, That since he said his journey to Rome was with a letter of civility to a temporal prince, and not about religion, the House (to be more fully satisfied of it) desired to see his Instructions. To which his lordship thus answered:]

I hope, Mr. Speaker, though I shall readily acknowledge my own natural weakness, you will not yet think me so imprudent, as that, in a time of such troubles and distraction, I would keep papers by me; and especially about Rome, to render myself liable to every malicious man's extravagancy and comment. This therefore caused me, Sir, the night before I went towards Wales, to burn all papers that came to hand; and truly, some among the rest that I have since wanted: Nay, this I can also justly aver, that I remember not now one word of those Instructions, having, I am confident, never read them twice; only this I remember, they were things of course, words of form, and needed no further consideration. Yet, Sir, that you may plainly see my sincerity, and how far I am from any design of illuding and deceiving you, I shall shew you how you may retrieve them, when I tell you, that Mr. Monstevens brought them me, and that they were drawn, as I take it, by Mr. Bridgman; for I am certain they came from my lord Sunderland's office.

But, my lord, replied the Speaker, had you no private Instructions? None, answered his lordship. What, none at all? said Mr. Speaker again. None, I'll assure, Sir, replied his lordship; unless the king's orders, to demand a cardinal's cap for prince Reinaldo of Este, were private Instructions; nor do I certainly know, whether those commands were in my fore-mentioned Instructions, or whether I had them by word of mouth.

My lord, said the Speaker, I have another question to ask you; to wit, Who of the long robe told you of the king's power of dispensing, and that there was no necessity of taking the oaths?

I am, Sir, answered his lordship, infinitely troubled, if I have, through want of care, or by any improper expression, given you occasion to misapprehend me; for I never asked any particular man of that profession about this affair. But my meaning was (and I hope my words are not contrary to my meaning) that the said power was manifestly and openly declared to be law by judges and lawyers;

so that I deemed it no solecism in discourse to mention it as if they themselves had told it me.

Then his lordship retired again, and after a long debate, the House passed this order, "That the earl of Castlemaine stand committed to the Tower by a warrant from this House of high treason, for endeavouring to reconcile this kingdom to the see of Rome, and for other high crimes and misdemeanors."

As soon as his lordship was informed of this Vote, he entreated a member to let the House know, that he had a word or two more to trouble them with: so that being brought in, the Speaker told him, that the House having notice he had something further to acquaint them with, was very willing to hear him.

Mr. Speaker, replied his lordship; I have nothing more to say about the former matters; but understanding your pleasure, I thought it my duty to let you know, how the custom of the Tower, as to prisoners, is changed; for in course heretofore, unless there were a particular order of state to the contrary, they had the liberty of the Tower; that is to say, they could walk about at seasonable hours with a warder: but now as soon as one is committed, though it be upon bare suspicion, as I was, he is confined to his lodging, and hindered from the consolation of seeing his friends, till, after much solicitation and trouble, leave be granted by the

secretaries. Therefore, Sir, being morally certain that I shall be confined again as soon as I return, I humbly desire the favour of this freedom; it being also what I hitherto enjoyed after I had been restrained for some days in the aforementioned manner.

This said, his lordship went out, and then was carried to the Tower, where he was made a close prisoner, as he foretold; though what he moved, occasioned the following Vote:

"That a Committee be appointed to bring in a Bill for the better regulating the Imprisonment of the Subjects of this Kingdom, and to settle the Fees of Gaolers." And it was likewise referred to them to examine into the abuses of gaolers towards their prisoners which have heretofore been committed.

On Wednesday the 5th of the following February, his lordship moved for his Habeas Corpus, and was brought by the lord Lucas, the present governor of the Tower, to Westminster, on the 10th. So that appearing at the King's-bench, his commitments were read, and Mr. Attorney having nothing to object against his being bailed, the court awarded it upon the security of 30,000*l.*; that is to say, a recognizance of 10,000*l.* for himself, and 5,000*l.* a-piece from his four sureties, who were, John earl of Bath, Thomas earl of Ailesbury, Thomas earl of Sussex, Charles lord Lansdown.

363. Proceedings against JOHN PRICE, esq. late Receiver of Ireland, and One Hundred other Protestants, at the Assizes at Wicklow, in Ireland, for High Treason, against King James: 1 WILLIAM & MARY,* March 6, A. D. 1689.

JOHN PRICE, esq. receiver-general to the late king Charles the 2nd, having his country

* This case is printed from a pamphlet intitled, "The Indictment and Arraignment of John Price, esq. late Receiver General in Ireland. With a hundred and one other Protestants, at Wicklow, before John Keating, esq. Chief Justice of the Common Pleas, a Protestant; and Henry Lynch, knt. Baron of the Exchequer, a Papist: with variety of Arguments between the Judges and Counsel, and the Lord Chief Justice Keating's Charge to the Jury. A Letter sent to and read by the Judges in the Court, for a Loan for the Popish Army's subsistence. With an Account of the Seizing and Condemnation of Sir Thomas Southwell, and two hundred other Protestant Gentlemen at Gallaway. Sir Laurence Parsons and several others at Birr and Maryborough, in the King and Queen's County, in Ireland, and the barbarous Execution of some of them. Collected by a person that was present, and took the same in writing. Licensed July 17, 1689. J. Fraser."

house in the county of Wicklow, at Ballinderry, 24 miles from Dublin, did for the safety and preservation of himself and family; obtain the lord deputy Tyrconnel's protection, as many more of the English Protestants living in the country at the same time did. For the late king James going away for France, and the administration of the government being put into the hands of his present majesty, the lord Tyrconnel gave out commissions, for the raising a mighty army, to any Irish Papist that would take one, and promise to subsist, maintain and clothe their men for three months. Most of these new officers are men of mean fortunes, not capable of subsisting themselves; their men live altogether on the English, coming into their houses in the day-time, and commanding from them their meat and drink; and often robbing them in the night, stealing away their cattle. Likewise the priests of every parish obliged all their people to furnish themselves with half-pikes and skeans, and bring them to mass, or not presume to appear there, on the penalty of excommunication, or a severe punishment; which caused all the

Irish to arm themselves with the aforesaid weapons; upon which, robberies, thefts, and other outrages were daily committed upon the English; particularly in the county of Wicklow, wheresome hundreds were got together for that purpose, who gave themselves the name of Merry Boys, and had very great success in their thievish attempts upon their Protestant neighbours, that lived hitherto secure in their own houses. It is observable, what great power the Romish clergy have over the Irish; they arm themselves immediately at their command, and yet to this day have neither kept them from robbing of the English, nor restored them any thing taken away; which if they had been so minded, they might have done by the same power. Several of Mr. Price's neighbours repaired to Ballinderry, to preserve themselves and goods; but an order coming out soon after, for the taking away all horses and arms from the Protestants, both in city and country, colonel Toole, with a party of his men, came to demand what arms and horses they had at Ballinderry. Mr. Price and the rest having the aforementioned protection, refused to obey their orders; and complaint coming to Dublin, colonel Sheldon was immediately sent away with a body of horse and foot against Ballinderry. Mr. Price, upon his approach, presently submitted to him, who thereupon was made prisoner, and all the rest of the men that were in the house: But the prison of Wicklow not being able to contain them, several of them were admitted to bail, until the following assizes, which began March the 5th last past, and ended the 8th, 1689.

The Prisoners Names that were indicted for this Treason, are as followeth:

1 John Price, esq.	28 Robert Milton,
2 Tho. King, gent.	29 Wm. Neale,
3 R. Westland, do.	30 Wm. Hill,
4 Wm. Heatly, do.	31 George Dizy,
5 James Lewis, do.	32 Stephen Robinson,
6 Edw. Lewis, do.	33 Charles Evans,
7 J. Burroughs, do.	34 St. Rathborn, jun.
James Bacon, do.	35 Edward Philips,
8 T. Burroughs, do.	36 John Colson,
9 T. Fetherston, do.	37 Wm. Wotton,
10 Jos. Chrichley, do.	38 Henry Delauny,
11 John Chrichley, do.	39 Tho. Cross,
12 G. Chrichley, do.	40 John Kempson,
13 Tho. Williams,	41 Tho. Watts,
14 James Williams,	42 Edw. Acton,
15 J. Clark,	43 Robert Anthony,
16 Caleb Chad,	44 Alexander Hill,
17 Tho. Bathe,	45 James Hill,
18 Jos. Thompson,	46 John Hill,
19 Tho. Halson,	47 Wm. Saville,
20 Henry Gibson,	48 Edw. Jones,
21 John Cock,	49 Peter Bland,
22 Tho. Peterson,	50 John Tomlinson,
23 John Ward,	51 Daniel Boyce,
24 Wm. Turner,	52 John Jones,
25 Tho. Evans,	53 Tho. Howard,
26 George Atkinson,	54 Charles Fryers,
27 Wm. Evans,	55 Andrew Wills,

56 Michael Wills,	79 Richard Price,
57 Samuel Allen,	80 Agabus Bardin,
58 Tristram Tinesley,	81 Henry Moody,
59 Robert Ashton,	82 John Burroughs,
60 Henry Tuton,	83 Edw. Hughs,
61 Ralph Kidd,	84 Edw. Jenson,
62 Wm. Fulham,	85 James Uton,
63 Wm. Erwin,	86 Wm. Ryder,
64 Agabus Kidd,	87 Luke Young,
65 Tho. Page,	88 Wm. Shorter,
66 Tho. Allen,	89 John Goodwin,
67 Rice Bibbin,	90 James Tench,
68 Nicholas Scot,	91 Tho. Manning,
69 Arnold Sutton,	92 Edw. Bowers,
70 Alex. Rathborne,	93 Tho. Adams,
71 Wm. Halson,	94 Robert Dunbar,
72 Isaac Collison,	95 Tho. Colston,
73 Jacob Collison,	96 John Bromwell,
74 Wm. Edwards,	97 Samuel Price,
75 Peter Barton,	98 James Tipping,
76 John James,	99 Edw. Graham,
77 John Jordan,	100 Christ. Cooper,
78 R. Burroughs,	101 Wm. Philips.

Grand Jurors' Names. Papists marked †,

† Christ. Wickham,	† Toby Tooll,
Wm. Hoy	Edw. Burly,
Cromwell Wingfield,	Leonard Frost,
† Wm. Wolverston,	Peter Ayris,
† Redmond Birne,	Wm. Baker,
† Tho. Birne,	† Lawrence Tooll,
† Wm. Birne,	Richard Lamb,
† Peirce Cromwell,	† Daniel Birne.
† Toby Walsh,	

After they were sworn, as usual, they received the following Charge:

Lord Chief Justice KEATING's* Charge to the Grand Jury:

Gentlemen; You that are here returned to serve on this grand jury, you have this day before your eyes the greatest example, and the firmest proof that a gracious prince can give to the best of subjects. You see his sacred majesty king James the second (whom God long preserve for the protection of all his good and dutiful subjects, and for the subversion and irradicating of all those who desire the subversion of his government, either by foreign

* In the Letters of Henry earl of Clarendon, frequent mention is made of the Irish judges, their characters, and behaviours, during the period of his lieutenancy in Ireland, in the reign of James the Second. He represents Keating very favourably in several letters. In that dated April 6, 1686, to Lord Chancellor Jefferies, he writes of Keating as being one whom "all parties will own to be a good man." Clarendon likewise writes favourably of Price. With respect to the administration of justice in Ireland, see also archbishop King's account of the state of the Protestants of Ireland under the government of James the second. As to the judges of England and Scotland at that period, see in this Collection, vol. 12, p. 257.

force or inbred conspiracy) notwithstanding the great troubles on his own person, yet he is not wanting in his care towards you; and I dare boldly say, it is the last thing he will relinquish in the world, after that of his own conscience, the care of his subjects. He hath sent us with his commission to inquire into all the maladies, diseases, and sores within your county. He has likewise given us command to apply the healing balsam of the laws, which will preserve the subject most entirely in his property. And I am sorry I must tell you, that there was never more need than now at this time. I am glad at the same time that I can say, that the mischiefs fallen on a great part of this kingdom, and on no part more than on this county, that is under the very eye of the government; I say, I am glad it can be said to have arisen, for the most part, from a rabble of people, who have armed themselves without any direction from the government, and that with unusual weapons. I mean half pikes and skeans. Gentlemen, I must tell you plainly, it looks rather like a design to massacre and murder, than any thing else. They do not belong to the army, neither are they any part of them: but these are the vultures, kites, and ravens that follow armies. Soldiers that have travelled abroad say, such are not known among them there. I am told, and very well assured, that in foreign parts, where these vultures and birds of prey are, it is hard for an army to lie concealed, without being discovered by them; for it is odds, but that a horse or a man drops where such multitudes of people are. I am very far from laying this to the charge of any that are under command; though it is possible that some of them, under the scarcity they are in, do give their assistance, or at least encouragement to these robbers; otherwise it could not be, that whole flocks and droves of cattle are daily driven away, and yet no one taken or brought to justice for it. The king is not wanting in his care; he has given directions to have the laws put in execution, that criminals may be brought in and punished; and the government has issued out many proclamations, but they are grown too familiar with them. You are to inquire into this matter, in order to bring to punishment, not only them that steal, but those that receive. I am told that open markets are set up in this county of Wicklow: a fat bullock for five shillings, and a fat sheep for one shilling; but it will fall heavy on them at last. Divines say, that God Almighty oftentimes makes the very crime to become their own punishment; and I verily fear, that a few months will produce a famine in this kingdom; and, what succeeds, a pestilence, and the worst of all pestilences; for it is observed, that a starved rot is the worst of all rots; it falls out unhappily at this season of the year, when the cattle are breeding. Under the old law the Jews were not to seeth the kid in the mother's milk; but these unmerciful wretches go further than that, sparing none, but destroying old and young, the increase and all. Pray,

gentlemen, consider of it, and search the houses of such as you have reason to suspect, that had not any thing to eat the last year; go now into their houses, and you will find whole carcasses of beef powdered up: nay, it may be for want of salt, or money to buy it, lying rotting and stinking. Let me tell you, it will be your turn next, when they have robbed and spoiled your Protestant neighbours, they will come to you, unless you take speedy care to prevent it. The king has done what he can, and the government what they can; in vain is the law made, if offenders be not brought to condign punishment. You all know there has been an invasion in England of a foreign enemy, the prince of Orange; and the same is designed on this kingdom: the effects of an invasion are not known. Defence is natural to all kingdoms and states, and therefore the government has given directions for raising a greater army than at any time heretofore this kingdom ever had. It was so among the Romans of old, who in cases of necessity did things clear contrary to the fundamentals of their laws. The same necessity has put the king on arming here (in France they have their ban, and with us our commission of array, from sixteen to sixty), but without any design that the effects should be to arm the country with half-pikes and skeans. They are fit indeed for the mountains, or to guard a man's house, but not to go abroad with at noonday. Gentlemen, you that are justices of the peace, and officers of the army, wherever you meet, you ought to secure them, and bind them over, and know by what authority they dare go abroad with such weapons. I need not say any thing to you in defence of the king, for it is really and truly your own defence; and therefore I shall proceed into the heads which are prepared for your inquiry at this time. Our business here is like to be very great, and our time short, and therefore I shall not trouble you with small things; we have greater matters than assaults and batteries. We have desolations and ruins to shew you, and set before you, and without your care, we are like to fall into the gulph of misery and destruction. The first thing we have to speak of, is high treason; we have no petty treason in Ireland. If any shall go about to conspire the death of the king, queen, or the heir apparent, the prince of Wales, this is high treason at all times; it was so at common law. You must look to this betimes, for if a blow be once struck here, there can be no retrieving of it. If any one should go about to seize the king's person, or imprison him, this, gentlemen, is treason; there is but few steps between the prisons and graves of kings; and by all the observation that I can make out of the English, or Scots, or Irish histories, where we have had swarms of murdered kings, that if once they went into prison, they seldom ever escaped with life. Our king has more reason than any to dread this. His father, who now is a glorious martyr in heaven, lost his life; and the king himself, ever since

his escape with colonel Bamfield from St. James's, has had so many miraculous deliverances both by sea and land, that we may conclude he is preserved for some mighty matter, or else Providence had not done such great things for him; and it is but of late that he himself is escaped out of prison. I am told by authority, and am ordered to tell you, that he is expected in this kingdom very suddenly, as a place of refuge. He is the first king, I think, since Henry the second, except Richard, that has been in this kingdom. It is a great misfortune that he should be forced to it, but we may look upon it as a great blessing, that he should think himself safe here, when he cannot be so elsewhere.

To seize any of the king's forts or ships of war (for these are the bulwarks to defend him against his enemies) this, gentlemen, is treason.

To hold correspondence with any of the king's enemies, or with rebels in actual rebellion, or to join with them, this is treason. You are not to inquire into the punishment, but to open a door for the petty jury to inquire into the matter of fact, and what the law is, shall, by the blessing of God, be our business.

To counterfeit the king's coin, or clip it (and you have very little of it at this time, therefore you had need be careful in a more especial manner), this likewise is treason.

It is likewise treason to counterfeit the great seal of the king; for it is the common security, by which many hold their estates, and some their lives.

The killing of the chancellor, or any of the judges or justices of oyer and terminer, in the doing of their duty, this likewise is treason, not so much with regard to their persons as to the work that they are about, they representing the king's person. The meanest constable there, if he has his staff in his hand, and doing his duty, he that kills him shall die the same death as he that kills the best man that wears scarlet on the bench. Gentlemen, I must tell you another crime, and it looks like a mark of infamy on this kingdom. Murder in England is but felony, but it has been thought fit to make it treason here, and they that go out on burning and robbing houses, they shall be indicted for treason: and clerk of the crown, if any such be here, now take notice, I will have them indicted for treason.

The next thing for your inquiry is felony, that concerning the life of the subject. For a man to kill his fellow subject, this is felony, if he does it on a sudden passion and heat; a man may kill another in his own defence; for it is natural for a man to kill rather than be killed, and therefore he shall have his pardon of course. But, gentlemen, this is not in favour of duels, and only where there is a great provocation: there is not a man but has some passion about him; but for a man to go to bed with malice, and arise the next morning and go meet his fellow subject and kill him, this is murder and treason in Ireland.

The next thing that is felony, is concerning

the goods of the subject; for an honest labouring man, that by the industry of his whole life has gotten a fair stock for the maintenance of himself, his wife and children, at night goes to bed, and next morning when he arises, he is a beggar and wants bread. Gentlemen, it would make every honest man's heart bleed to hear what I have heard since I came into this country. It is ill in other parts of the country, but here they spare not even the wearing clothes and habit of women and children, that they are forced to come abroad naked, without any thing to cover their nakedness: so that besides the oath you have taken, and the obligation of Christianity that lies upon you as you are Christians, I conjure you by all that is sacred, and as ever you expect eternal salvation, that you make diligent inquiry. Let it never be said by any of you, that it was your neighbour, or your neighbour's servant did it, and you are sorry for it, but will not trouble yourselves: I tell you it is every man's business, and I beseech you look into it.

To break into any man's house after night-fall, is felony. It is a sound sleep that the labouring man takes, but the idle rogue that lies lurking and sleeping all the day, at night he arises and seeks whom he may devour. If you were to do the most charitable work, as building of a bridge or chapel, or mending a highway, how many do you think of these men with half pikes and skeans would come to your assistance? Not one of them, I will engage. But if a house or town be to be plundered, they all run thither. All riots and routs are to be inquired into. Numbers of people may meet for their own defence, if they should hear or see the country robbing and spoiling, by a riotous multitude coming to burn and rob their houses. In this case they may meet and defend their goods, and apprehend the robbers, in order to bring them to justice; but after all this, they are not to contest with the government, nor do any thing to the prejudice of that. I told you, I would not trouble you with unnecessary matters: all are lost in the greatest of crimes and outrages that are committed daily in the country round about.

If I should go through all the heads of this charge, it would take up more time than we have to spend here; and therefore I should shut up all and say no more than this, that every man do apply himself to his husbandry and tillage, to prevent that imminent danger of an approaching famine that seems to be coming upon us, and that you make it your business to search after, and bring to judgment those robbers that live on the mountains; and while you continue to do your duty, you shall have all the protection the government can give you. So upon complaint of any justice of the peace that shall be backward or unwilling to appear against them, care shall be taken to punish such, and make them examples. Go together, gentlemen, and consider of these things.

[The Prisoners brought into Court.]

Clerk of the Crown. Set John Price to the bar, Thomas King to the bar, W. Lewis, James Beacon, William Heatly, Thomas Burroughs to the bar, &c. Hold up your right hands.

Clerk. John Price, Thomas King, &c. You stand here indicted, for that you, on the 25th day of February, in the 5th year of the reign of our sovereign lord king James the 2nd, at Ballindary, in the county of Wicklow, with divers other wicked traitors and rebels, in a warlike manner then and there did assemble yourselves, and a cruel and open war and rebellion against our sovereign lord the king, and his faithful subjects of this his majesty's kingdom of Ireland, did raise and levy, and did intend our sovereign lord the king to death and destruction to bring, and to depose him from his kingly authority and government of this his kingdom of Ireland; and to fulfil and accomplish these your said traitorous intentions and designs, you the said persons, with others said wicked traitors and rebels, the day, year, and place aforesaid, did arm yourselves with divers warlike weapons, as well offensive as defensive; and did move and excite divers others the subjects of our sovereign lord the king, to join themselves wickedly and traterously, against the peace of our sovereign lord the king, and the duty of your allegiance, and the statute in that case made and provided, &c.

Clerk. How sayest thou, John Price, art thou guilty of the treason that thou standest here indicted, &c. or not guilty?

Mr. Price. Not guilty.

Clerk. Culprit, how wilt thou be tried?

Prisoner. By God and the country.

Clerk. God send you a good deliverance.

Note. The Prisoners were brought into Court in several parties, to be arraigned, as many as the dock would hold at one time.

[The second time the dock was filled.]

Clerk Cr. Set William Fulham to the bar, &c.

[Thady Brine, the High Sheriff, stood up and said, my Lord, Fulham was cleared.]

Baron Lynch. Pray, Sir, who cleared him?

High-Sheriff. The chief commissioned officer that was here; colonel Sheldon did acquit him.

Baron Lynch. He acquit him! how could that be? If there be nothing against him, we shall acquit him.

L. C. J. Clerk of the crown, is he indicted?

Clerk. Yes, my lord, a bill of indictment is found against him.

Pendergrass, the Sub-Sheriff. My lord, I will tell you, Mr. Sheriff is mistaken; there was some boys discharged, and he thinks Fulham is one of those boys.

Baron Lynch. Sir, you do well to reflect on your employer.

High-Sheriff to the Sub-Sheriff. You have done this to get money for yourself. My lord, Fulham was not concerned at all, and therefore was discharged.

Prisoner Lewis. My lord, we are so crowded with a file of musqueteers and a serjeant, that they take up our chairs, that we cannot sit down; and they come with their lighted matches to our very noses; and last night a piece went off in the room among us. We have not the conveniency of quiet repose, nor our friends the liberty of seeing us. My lord, we were not born lawyers, therefore desire we may have our friends come to us, and counsel to advise with.

[This Lewis and lord Galmoy are brother and sister's children, and was offered a troop if he would turn Papist.]

L. C. J. Mr. Lewis, you have been bred to the law; but you shall have counsel allowed you; and you, Mr. Sheriff, you are not to keep them with fire-arms, nor with your soldiers. I saw a sentry at this door yesterday, and forbade it. I remember that when Warren, Jephson, and Thompson were tried in 1663, for a design to surprize Dublin castle, because this was a great matter, forsooth, they must be guarded with soldiers——(they were tried at the King's Bench; and several persons desirous to see or hear, being gotten up into the arch in the wall next the court of Common Pleas) as they were going up stairs, a piece went off, and shot a man through the head. I tell you, Mr. Sheriff, that brown bill is your guard [pointing at one in court]; the law knows nothing of fire arms; [speaking to the prisoners] gentlemen, I must tell you plainly, that I received directions from my lord deputy, by the Attorney General, that you should have all the justice imaginable.

Baron Lynch. Mr. Sheriff, you must command those soldiers to be civil, they are your guards when you employ them.

Seventy prisoners were arraigned and returned back to prison; 31 more that were indicted, and upon bail, did not appear.

Thursday, March 7. They were again brought to Court to their Trials, and the Jury was impanneled, whose names were as followeth; Papists marked thus †; viz.

† Thomas Cowdell.	Daniel Powell.
Philip Cradock.	† Richard Johnston.
John Pew.	† Theophilus Higgens.
† Alexander Higden.	† Nicholas Wall.
† Christopher Talbot.	† Charles Tool.
† Garret Birne.	† Anthony Archer.
† Dudley Keogh.	† Charles Birne.
† John Keogh.	† Cornelius Kenan.
† David Toole.	Tho. Elliot.
† James White.	Richard Baker.
† Darby Toole.	† Thady Birne.
† Gerrard Harold.	† Francis Tute.
† Daniel Birne.	† James Moore.
† Patrick M'Donnell.	† Hugh Birne.
† Patrick O'Donnelly.	† Bryan O'Neal.
† Christopher Birne.	† Dennis Cullen.

Jailor, set the prisoners to the bar.

Clerk Cr. You good men that are to try the several issues between the king and John

Price, &c. and other prisoners at the bar, that shall be given you in charge, &c. jury, look at the prisoners; prisoners, look at the jury.

Clerk Cr. Thomas Cowdell, to the book.

Prisoner Lewis. I challenge him.

Clerk. What is your cause of challenge?

Deputy king's counsel, Fitzpatrick. My lord, before they begin their challenges, let us know whether they will all agree in their challenges, otherwise we must be forced to try them severally.

It was at length agreed, that if any one made a peremptory challenge, the other prisoners were to be satisfied with it.

[*Col. Tool* on the bench, speaking to the lord chief justice Keating.]

My lord, Mr. Lewis has been sub-sheriff of the county, and knows all that have freehold.

L. C. J. It is the better for himself that he does know them.

Prisoner Lewis continued to challenge, until they had gone through the pannel, and only two gentlemen that were Protestants, Mr. Craddock and Mr. Pew, were sworn.

Clerk Cr. Mr. Sheriff, a new pannel—The sheriff gave in another of eleven in number, which were all likewise challenged by Mr. Lewis.—Whilst both the high and sub-sheriff were looking about the court, for to make up a third pannel, says

L. C. J. Mr. Sheriff, how many freeholders have you on the grand-jury?

Sheriff. Six or seven, my lord.

L. C. J. You have been sparing enough of your freeholders. The law requires that all the grand-jury should be freeholders, and have you but six?

Sheriff. There is but very few freeholders in the county, my lord.

Couns. Fitzpatrick. In cases of necessity, my lord—

L. C. J. You know the law is so.

Couns. Fitzpatrick. Yes, there is a statute for it.

L. C. J. The prisoner for his life may challenge twenty peremptorily, without shewing cause; and the whole world for want of freehold—And shall I put such a one on for his life? Sir, I will not be hanged for any body.

Fitzpatrick. Was ever a judge hanged?

Mr. Handcock, counsel for the prisoners. Yes, above twenty in a few years.

L. C. J. Mr. Fitzpatrick, I will not be hanged with justice Belknap, nor Tresilian* neither.

Couns. Handcock. My lord, they were hanged at Tyburn.

L. C. J. I think they were. The greatest part of this county is in the hands of two or three men, my lords Strafford and Ross.

L. C. J. Who is here that is concerned for my lord Strafford and my lord Ross?

* See their cases, vol. 1, p. 89. It does not appear that Belknap was hanged; see vol. 1, p. 120.

Court. Here is Dr. Hall on the bench for the lord Strafford, and the sheriff is concerned for my lord Ross.

L. C. J. Dr. Hall, and you Mr. Sheriff, let me tell you I do not know but that their lordships have forfeited their estates for this day's work. In the act for plantation, there was provision made for freeholds, and there were enough before the wars. I fear these great lords have swallowed up the freeholds their ancestors made. I only tell you this.

The Sheriff by this time had drawn up a third pannel, being eight in number.

L. C. J. Mr. Sheriff, have you all your freeholders here?

Sheriff. My lord, we summoned all here.

L. C. J. On the first pannel you might have returned forty, because you do not know how far preremptory challenges will run; and you are obliged after to return a fewer number when you enlarge your pannel; but you can never enlarge it farther than it was at first.

Clerk Cr. Birne, to the book.

Pris. Lewis. I challenge him for want of freehold.

L. C. J. Mr. Birne, have you a freehold in this county?

Birne. My lord, I have a lease of lives.

Pris. Westland. I challenge him preremptorily.

Baron Lynch. What, Sir, do you begin to challenge? This shall not be allowed you, to challenge one upon another.

Couns. Hancock. My lord, you are counsel for the prisoners.

Baron Lynch. Sir, you are not to tell me my duty; I will have you to know, Sir, I shall give an account for myself. I am judge for the king too, as well as counsel for the prisoners; and I am concerned for the king.

L. C. J. [Turning towards him.] And do you think I am not concerned as well as you?

Baron Lynch. Yes, my lord, I speak for you as well as myself.

Couns. Fitzpatrick. My lord, they agreed at first, that one man should challenge for them all. At this rate we are never like to get a jury for them. It is but an ill sign of their innocency, that they are not willing to come to a trial.

Mr. Hancock, counsel for the prisoners. In the peremptory challenges they agreed (but not in the challenges for freehold,) and this peremptory challenge we will stand by.

L. C. J. I will tell you how I understood it: That in their peremptory challenges, if any one of them challenged, the rest should be concluded by it. Mr. Westland has made a peremptory challenge, and they are willing to stand by that; however, Mr. Birne, stand by, do not go away, we may call you again. Clerk of the crown proceed, &c. which he did, until he ended the third pannel.

Sub-Sheriff calls William Baker.

Ans. My lord, he has a freehold.

Baker. My lord, I have no freehold.

L. C. J. You see the Sub-Sheriff is a fit man to be an officer; he is blind—he is indifferent.

High-Sheriff calls Peter Ayris.

Ans. He is on the Grand-Jury.

L. C. J. Mr. Sheriff, why do you call such?

Sheriff. I saw him in court, and so I called him, my lord.

L. C. J. There is already but five peremptory challenges made, so that they may challenge 15 more peremptorily; and there is but two sworn, so that there wants ten.

Cl. Cr. Sheriff, see if you can get any more.

Sheriff. I see never a freeholder in the court.

Couns. Fitzpatrick. My lord, the sheriff ought to be punished for his neglect.

Baron Lynch. Sir, why did you not take care to return a jury of freeholders? You shall be fined for it.

High-Sheriff. My lord, I have returned all the freeholders there is in the county (I sent yesterday about twenty miles for one gentleman here), they are all gone out of the country. I hope you do not expect I should go to the North, or Isle of Man, or England, or Scotland, among the rebels, to summon them.

L. C. J. I do really believe you, Mr. Sheriff; you have done like an honest man. *Mr. Fitzpatrick* what do you say in this case?

Fitzpatrick. My lord, I cannot tell what to say.

Deputy King's Couns. Hammond. What if there was not one freeholder in the county, must not justice be done?

L. C. J. Can we make a law for it?

Hammond. My lord, I know that in case of an ejectment, a trial has been removed from one county to another.

L. C. J. Can you by law go to another county in case of life?

Hammond. It appears there is not sufficient freeholders in this county, the lands being in some few hands.

L. C. J. You know the law is otherwise, and what would you have us that are judges do? Pray, tell us, Sir, what you would be at?

Hammond. We would have it removed to the next county, or another county.

L. C. J. For God's sake, Mr. Hammond, do not put us on making law.

Baron Lynch. Mr. Hammond, when did you hear that ever a matter capital was tried in a foreign county? In matters civil, by rule of court, or order of Chancery, it may be, but of a capital offence it was never known: and we are by our commission to try offences committed against the law in the counties where the fact was committed. We must try them in this county, and cannot remove them from one county to another.

L. C. J. Mr. Hammond, because I would take you off of this new law that you so much insist on, that in case of an ejectment it may be tried in a foreign county—I tell you it cannot

be tried in a foreign county: we have no law for it but that of king James, and the reason was, because of the story that was here on foot; for an heir male, if collateral, he carried it against the heir general. King James he gave direction that in that case it should be tried in a different county. And that my brother tells you of trying in a different county by order of Chancery, is this: a person comes in Chancery and he suggests that such an one was too potent in such a county, and therefore he desired it might be tried in an indifferent county, or get such a rule of court on such a suggestion. And this was the case of the archbishop of ——— when he was bishop of Limerick. And if Walcot might be believed, he said, was the occasion of his running into rebellion.

C. There is a case in Hobart, &c.

L. C. J. I would undeceive you in that particular: as in the case of Austen and colonel Garret Moor. If in the county of Galloway, it was Austen's; if in the king's county, it was colonel Moor's. So that you see, in disputable cases, the law has regard that it be tried by juries in proper counties: and truly I think it one of the most reasonable laws in the world that a man shall be tried by his county, by the neighbourhood; and it has given ground to a good English proverb, 'He that has an ill name is half-hanged.' A man's repute among his neighbours goes a great way in this matter when his neighbours shall say they never knew ill by him. And this man to be carried out of the county of Wicklow, to be tried at Wexford you may by the same rule bring a jury from Tyrone, or the farthest part of Connaught. There is nothing like what you say in the law.

Hammond. I do not say that ever I met with such a thing in the law.

Baron Lynch. And do you think that we will make the precedent?

Hammond. That two or three persons should have almost the whole county!

L. C. J. Before God, I believe they think they have little enough, whatever you may think of their having too much.

Baron Lynch. What you say, Mr. Hammond, if there be any thing in it, we shall advise with all the Judges.

The Judges declaring their opinion, that the prisoners after being arraigned, could not be admitted to bail,

Coun. Suxborough to Baron Lynch. My lord, you took bail for captain Ruth, at Kilkenny, after his arraignment.

Baron Lynch. What, Sir, do you reflect on me? There was no evidence appeared, and my brother bailed him as well as I.

Coun. Suxborough. I say he was bailed.

Mr. Hancock. My lord, Mr. Cooper, at Galloway, was bailed by your lordship likewise.

Lord Chief Justice Keating sent privately to Dublin to the Deputy, acquainting him, that if they were left in prison until the next assizes, they would certainly perish, they having lost

all they had, and the county was not able to maintain them; upon which he received orders to bail all but seven of the principal; viz. John Price, esq., Thomas King, Richard Westland, William Lewis, James Bacon, Joseph Crichley, and George Crichley; who are kept close prisoners, in order to their trial the next assizes, which will be in this month of July. Upon the taking these gentlemen prisoners, the soldiers and rabble plundered and spoiled all the English families in Balinderry, Redrum, Balina-Clash, &c. and the Irish women, with their skeans, came afterwards and stripped the women and children naked, leaving them in a most miserable and deplorable condition, having not left them either bread, or any food in several towns, but carried all away with them. And as an Irishman, a tanner, declared to several at the assizes, in the hearing of this relator, that one capt. Tool had for his share twenty-six horse-loads, or more, of plunder; and the lord of Lowth's troop of dragoons that were quartered in Wicklow town, had great quantities of woollen and linen cloth, women's clothes, pewter, and other goods in abundance. But the Lord Chief Justice Keating coming there to the assizes, and having an account of the extreme poverty and misery the Protestants thereabouts were reduced to, did encourage their petitioning, and where they could find their clothes, &c. he endeavoured to help them in the recovery of them. And Mr. Richard Lamb having ten fat bullocks taken away by col. Tool's men, and brought to Wicklow, and there killed and eaten by the soldiers, he preferred a petition to the court, col. Tool being present on the bench.

L. C. J. Keating. Colonel Tool, you heard the petition read; do you know any thing of these oxen Mr. Lamb had taken from him by your soldiers?

Col. Tool. My lord, I will tell you how it was: Mr. Lamb had sold the bullocks to Mr. Price, and as they were driving them to Balinderry, the soldiers met them and took them away.

L. C. J. But Mr. Lamb was at home at his own house, and not at Balinderry; the bullocks were to be paid for upon Mr. Lamb's delivering them to Mr. Price at Balinderry; your soldiers took them away from his servant several miles from Balinderry: I see no reason why Mr. Lamb should not be paid for them.

Tool. My lord, colonel Sheldon came down soon after with the king's army, and I advised with him, and he ordered they should be killed for the army, which was done accordingly.

L. C. J. Pray, colonel Tool, however, Mr.

Lamb ought to be paid for them; he was not concerned with Balinderry, but kept his own house.

Coun. Fitzpatrick. My lord, his house was a garrison too.

Mr. Hancock. For shame, Mr. Fitzpatrick, a thatched cabin a garrison! I find you are for making all Protestants rebels that live peaceably at home in their own houses.

Tool. My lord, I have no more to say to the matter.

Clerk of the Crown, calling over the gentlemen of the county, called one — Savil, gent.

Mr. Savil. Here I am, my lord, God knows, a poor gentleman, being robbed of all, and not a penny left me to buy a pint of drink.

L. C. J. Pray, Sir, when were you robbed.

Savil. The last Wednesday; they came and took away what little they had left untaken before, my wife and children's clothes, robbing me of all.

L. C. J. Pray, Sir, what value may your loss be?

Savil. Truly, my lord, I have not yet computed my loss, but they have taken away all; I desire your lordship will discharge me from attending the court, for I have not wherewithal to subsist while I am here.

L. C. J. Sir, I am sorry for you, I discharge you.

L. C. J. Col. Tool, let the officers be sent for into court, to hear this Proclamation read, that is sent down here by the government.

Tool. My lord, they are here most of them. Here is captain Archbold, captain Tool, &c.

Clerk of the Crown read the Proclamation, the substance whereof was, That they should restore the Protestants such of their horses again, as were not fit for the king's service, &c.

L. C. J. calls for it from the Clerk, and giving it into col. Tool's hand, who stood next him on the bench; Sir, pray take this Proclamation, and I hope you will take care that obedience be given to it.

Tool. My lord, we have received other orders; colonel Sheldon, who is our chief commander, has given directions to have them kept for draught for carriages.

L. C. J. Nay, Sir, if colonel Sheldon must be obeyed before the government, I have no more to say, I have done.

Tool. My lord, I shall obey it.

L. C. J. Pray, then, colonel Tool, let the horses be sent for while that I am here, that what horses are not musterable may be returned: I cannot in my conscience go about to fine men for not appearing at the assizes, when they have not a horse left them to ride on.

364. The Trial of MAURICE CAVENAGH, EDMUND POOR, and WM. BOWLAND, in Ireland, for Felony, in stealing Cows: 1 WILLIAM & MARY,* March 7, A. D. 1689.

SEVERAL were arraigned for stealing considerable numbers of cows, sheep, &c. but the evidence against most of them durst not appear to prosecute. Leaghlin Birne, indicted for stealing nine head of black cattle from one Colwell, no person appearing to prosecute, says

L. C. J. Keating to the Jury. Gentlemen, you have nothing against this man; he was born in the state of innocency; but the truth is, the parties dare not appear against him.

Witnesses came in against three fellows; viz. Maurice Cavenagh, Edmund Poor, William Bowland.

Clerk of the Crown calling them to come and prosecute, and they appearing,

L. C. J. You that are evidences against the prisoners at the bar, I charge you, as you will answer it before God, that you neither for favour nor affection be inclined to spare any of these villains; and likewise, that you will conceal nothing of the truth, as you will answer it at the great day; for I tell you, the cries and groans of the poor women and children, and the many families that are ruined, and in great distress, will go up to Heaven against you.

Evidence against Edm. Poor. My lord, when I came to him, and asked him why he stole my cows, he said, the devil did make him do it. I spake him fair, and he gave me money for my cows.

Poor. Ay, my lord, and he promised not to trouble me.

L. C. J. It was an unlawful promise; the law would not justify him in it; he has done like an honest man. If you paid the money out of conscience, you did well; but I fear it was your danger of the halter made you part with your money; for if twenty-two shillings and damnation stood in the way, I believe you would have kept the money. I am sure, without satisfaction, you cannot expect absolution; the priest that gave the other advice for the maddoge or skean, will, I suppose, tell you so.

Two Protestant evidences against Maurice Cavenagh, for stealing several head of black cattle, hearing judge Keating speak against skeans, said,

Evidence. My lord, when we seized him, we took a skean away from him.

* In the pamphlet mentioned in a note to p. 613, after the case of Price and others, this case is inserted with the title of "The farther Proceedings at the Assizes at Wicklow, in Ireland, being an account of the trial of several felons, &c. March the 6th and 7th, 1688-9."

L. C. J. Sir, How durst you carry such an unlawful weapon?

Cavenagh. My lord, I am a butcher, it was a butcher's knife.

L. C. J. Ay, I do not question but thou canst butcher upon occasion.

One *Hicky* spoke. My lord, he is no butcher, but one of the greatest rogues in the county round us. I have been in pursuit of him several times.

Cavenagh. He is a murderer, my lord, do not believe him.

Evidence. My lord, it was near ten inches long, thick at the back, and sharp point, every way a skean.

L. C. J. Is that your butcher's knife? You are a great villain, for carrying such a weapon.

Cavenagh. I was ordered to have a skean, my lord.

L. C. J. Pray, sir, who ordered you?

Cavenagh. The priest of the parish.

L. C. J. A priest, sir! [turning to his brother judge] Do you hear that, brother?

Baron *Lynch.* What priest, sir? What priest? What is your priest's name?

L. C. J. Hold, brother. Come, sir, I shall not ask your priest's name: I believe you will have occasion to see your priest soon, to do you a better office than to advise you to carry skeans. [And looking towards col. Tool, and two priests on the bench, next sheriff Birne.] A priest, gentlemen! A priest is a minister, and a minister of the gospel; his doctrine ought to be peace, for the gospel is a doctrine of peace. When our Saviour came into the world peace was proclaimed; and when he went out of the world he left it for a legacy to his disciples: 'My peace be with you.' And pray, sir, tell your priest so from me when you see him. It is not for priests to arm or animate such villains as you are for mischief. I shall not ask your priest's name.

Clancy, an Irish gentleman. My lord, he belies the priest; he is a rogue.

Cavenagh. I do not. The priests of every parish did give orders to get half-pikes and skeans; and they were getting together in companies in every parish.

L. C. J. Who were they that were gotten together; such fellows as you?

Cavenagh. No, my lord, better men than I; a great many that are here in court.

The Jury withdrawing, and returning soon again, brought Poor and Bowland in guilty, Cavenagh not guilty.

L. C. J. Gentlemen, you have acquitted the greater villain; at your door let it lie.

The Ordinary being called to give Bowland and Poor the book, for their clergy,

L. C. J. Sir, I expect as true a return from you, as if I were there myself. The times are so, that men must forget bowels of mercy. Ordinary, do your duty. What place do you shew them?

Ordinary. My lord, I shew them the fiftieth psalm.

L. C. J. Let them read the fifth verse.*

* Mr. Justice Foster (Crown Law, chap. 7, p. 306) says, that the scrap of Latin called the Neck Verse, which was commonly made the test of reading, was "Miserere mei Deus." I suppose the beginning of the fifty-first psalm.

With respect to the Benefit of Clergy, much learning is to be found in the cases *Searle v. Williams*, Hob. 288. *Armstrong v. Lisle*, Kel. 89, 93. *Rex v. Burrigge*, 3 P. Williams, 439. See, also, in this Collection the Cases of lord Audley, vol. 3, p. 402; of Mary Moders alias Stedman, vol. 6, p. 281; of lord Warwick, A. D. 1699, and of the duchess of Kingston, A. D. 1776. See, also, Foster's Crown Law, Discourse 2, chap. 7, and 4 Black. Comm. chap. 28, of which last, an abridgement is incorporated into the Law Dictionary, article 'Clergy, Benefit of.'

According to Mr. Barrington (Observations on, 4 H. 7), Benefit of Clergy "is properly the 'privilege of learning,' as clergy," says he, "in the old French, signified science; thus, by the old proverb,

'Un poignet de bonne vie
'Mieux vaut qu'un mury de Clergie.'"

Among other particulars, concerning Benefit of Clergy, Mr. Barrington gives us the following:

"Lord Bacon says, that the bishop was to prepare the book, and the judge was to turn to what part he should think proper, vol. ii, p. 378. This contradicts the generally received tradition, which is, that the criminal was tried in reading a particular verse of the Psalms.

'And if they cannot read one verse
'I'th' psalms, must sing it, and that's worse.'

HUDIBRAS.

"An instance is mentioned in Dr. Grey's notes on these lines, of a criminal who obtained this privilege by reading under the gallows.

"Sir Thomas Smith gives this account of the practice in the year 1565, with regard to the prisoner's claiming the benefit of clergy. 'The bishop must send to every gaol delivery a proper commissary. If the prisoner asks his clergy, the judge commonly giveth him a psalter, and turneth to what place he will; the prisoner then readeth as well as he can (God knows often very slenderly); then he asketh the bishop's commissary, *legit ut cle-*

This is an act of mercy, and I know not why it should not be in Irish rather, the country language. It was formerly in Latin, because the Romish church hath their worship in Latin.

The ordinary returned them both, *non legit*.

L. C. J. You William Bowland, and you Edmund Poor, you have been arraigned for stealing of cows, two several thefts: it is a great misfortune and sin to be guilty of such

'ricus? The commissary must then answer, 'legit, or, non legit.' Commonwealth of England, p. 94. Lord chief justice Keeling fined a bishop's chaplain in 1665, for reporting that a prisoner could read, who was not able to do so; and upon the second trial he was refused his benefit of clergy." Eden's [the present lord Auckland] Princ. of Pen. Laws, p. 173.

In his Observations on the Statute of Treasons, 25 Edw. 3, Mr. Barrington mentions the article of counterfeiting the King's Great or Privy Seal, "which," says he, "I should not have taken notice of, as this part of the law cannot be more clearly expressed, did not a writ printed in the original French, at the end of some other statutes (Cay's Stat.) of the same year, give us the intimation of a very great neglect in this part of the act, which in some measure seems to countenance an observation made by Carté, that no lawyer sat in this parliament, when this most constitutional statute became a law. This writ mentions a claim made by the clergy, that a clerk, who was convicted of counterfeiting the Great or Privy Seal, or the king's coin, should have his privilege of clergy: to which the king answers, 'that he is too much pressed by business of the greatest importance to decide this point; but that, if any clerk should be convicted of this offence before the next session of parliament (in which he hopes it will be fully discussed), he shall not be executed, but delivered to the ordinary.' It is, therefore, highly probable, that this point must have been before the legislature, and yet nothing is said with regard to the privilege of Clergy. It might be impolitic, indeed, that this claim should have undergone a discussion in parliament at this time; but as the clergy had, in effect, established this privilege, the opportunity of taking it expressly away should not have been omitted."

Dr. White (Bampton Lectures, Sermon 2) has noticed the gross ignorance which, in very early times, prevailed among the Christian clergy as well as laity, and which we know continued to prevail very long after the period of which he writes, as follows:

"Historians have exhibited to us the most melancholy picture of the universal darkness and ignorance which, at the beginning of the seventh century, had overspread all ranks of men. Even the ecclesiastical orders scarcely afforded an exception to this general descrip-

crimes at any time; but yours is so much the worse, because it falls in a time when there are such general and vast depredations in the country, that many honest men go to bed possessed of considerable stocks of black and white cattle, gotten by great labour and pains, the industry of their whole lives, and in the morning

tion. Among the bishops, the grand instructors and defenders of the Christian church, few, we are told, could be found whose knowledge and abilities were sufficient to compose the discourses, however mean and incoherent, which their office sometimes obliged them to deliver to the people."—And he proceeds in a Note:

"The want even of a knowledge of the common rudiments of literature was so general among the higher ecclesiastics of those times, that it was scarcely deemed disgraceful to acknowledge it. In the acts of the councils of Ephesus and Chalcedon, many examples occur, where subscriptions are to be found in this form: 'I, such an one, have subscribed by the hand of such an one, because I cannot write.' And 'such a bishop having said that he could not write, I whose name is underwritten, have subscribed for him.'"

Alfred (see 1 Hume, 76, edition of 1782), complained that on his accession he knew not one person south of the Thames who could so much as interpret the Latin service; but in the 'Encomium Emmæ,' which seems to have been written about the year 1040, there are, as Mr. baron Maseres has noticed, different allusions and imitations of Virgil and Lucan: and Hume, vol. 3, Note [L] has observed, that the ancient Monkish writers abound in allusions to Latin classics, especially the poets. See, also, what Ingulphus says of his being opposed by queen Egitha, *Historiæ Anglicanæ Selecta Monumenta*, p. 110, and the allusion by Ordericus Vitalis to the story related by Suetonius and Lucan, of the mutiny at Placentia quelled by Julius Cæsar, p. 227, of the same work. See, too, Barrington, *Observations on Statutum de Marlebridge* (52 H. 3), cap. 27; and on the Confirmation of the Charters, 25 Ed. 1.

For proof of the excessive ignorance of the clergy, see Espencæus and Hakewill's "Apologie or Declaration of the Power and Providence of God," as referred to in the *Biographia Britannica*, art. Basinge (John).

Mr. Barrington much doubts whether the parochial clergy could read in the reign of Edward the first. See *Observations* on 25 Ed. 1. See, too, *Nouveau Traite de Diplomatie*, vol. 1, p. 377, as there referred to. And Barrington's *Obs. on*, 1 Hen. 5.

The case, mentioned by Barrington after lord Auckland, seems to have been that, of which lord chief justice Kelyng himself gives the following report:

"Lent Circuit, 18 Car. 2, [A. D. 1666.]

"At the assizes at Winchester, the clerk ap-

when they arise not any thing left them, but turned out of all, to go a begging, all being taken away by rebels, thieves and robbers, the sons of violence, that make every thing they lay their hands on their own. On this side the Cape of Good Hope, where are the most brutish and barbarous people we read of, there

pointed by the bishop to give clergy to the prisoners, being to give it to an old thief; I directed him to deal clearly with me, and not to say *legit*, in case he could not read; and thereupon he delivered the book to him, and I perceived the prisoner never looked upon the book at all, and yet the bishop's clerk, upon the demand of *legit* or *non legit*, answered *legit*; and thereupon I wished him to consider, and told him I doubted he was mistaken, and bid the clerk of the assizes ask him again, *legit* or *non legit*; and he answered again, something angrily, *legit*. Then I bid the clerk of the assizes not to record it: and I told the parson, he was not the judge whether he read or no, but a ministerial officer to make a true report to the court; and so I caused the prisoner to be brought near, and delivered him the book, and then the prisoner confessed he could not read; whereupon I told the parson he had reproached his function, and unpreached more that day, than he could preach up again in many days; and because it was his personal offence and misdemeanor, I fined him five marks, and did not fine the bishop, as in case he had failed to provide an ordinary." Kelyng's Reports, p. 51.

I am not aware of any direct evidence, that the judges made a practice of taking upon themselves to select, from among the persons convicted of clergyable offences, particular individuals, with regard to whom the ordinary was to be "directed to deal clearly;" and the existence of such a practice is not to be inferred from the conduct of Kelyng in the case which he has reported as above. (With respect to judicial discretionary powers of such a nature, see the excellent speech of sir Samuel Romilly,* Cobb. Parl. Debates, 1810.) Sir Thomas Raymond, mentioning the death of Kelyng, characterises him as a 'resolute' judge; and, indeed, it does appear, that his resolution greatly surpassed his discretion, his moderation, and his observance of the rules both of law and of decency. See in this Collection, vol. 6, pp. 992, et seq. and the Case of Flower, as there referred to.

See, too, p. xcviij, of Mr. Hargrave's learned Preface to lord Hale's Treatise on the Jurisdiction of the Lords' House of Parliament.

By Stat. 5 Ann. c. 6, the benefit of clergy shall be granted to all those who are entitled to ask it, without requiring them to read: and thus the 'idle ceremony of reading,' as Foster expresses it, is abolished.

* The speech of sir S. Romilly is that which he published in 1810, under the title of 'Observations on the Criminal Law of England.'

is none like the people of this country: nor so great a desolation as in this kingdom, at this day any where to be found, and particularly in this county. It is come to that pass, that a man that loses the better part of his substance, chooses rather to let that, and what he has besides go, than come to give evidence: and why? Because he is certain to have his house burnt, and his throat cut, if he appears against them. Good God! what a pass are we come to! For what has any man, if the stronger hand can take it from him? It is better to live under no law, than in such a place. We have lived to see twenty-nine years of peace pass over our heads, and I have sat on this bench before now. I pray God that my lenity, and others, has not given encouragement to these thieves and robbers. There may be a rogue in the court, or one that is evilly inclined (I know none), but take notice of this, the government is at length tired with mercy; they see it does no good, and examples and punishments of this kind are not intended so much in a great part for the punishment of the offender, as for discouraging of others, to make them take warning by their example, that, seeing what evil courses bring men to, they may reform.

I will not take up time to tell you how the benefit of clergy came; whether in the room of the cities of refuge that were in the old times. I know that restitution was, under the Jewish law, sufficient satisfaction: and if the thief could not make restitution, he was to be sold for a slave, and the money given to the party. But as the world grows old it grows worse, and those lenitives signify nothing for preventing thieving and robbery, for thieves and robbers are like a gangrene in the commonwealth; they are worse than drones in the hive. I cannot tell myself, that under the circumstances we are in, I should advise to pardon any that are taken in this general depredation that we are under; and therefore you Bowland and Poor, that might have lived as safely under the laws as the biggest man in the kingdom, and none of your fellow subjects durst lay his hand upon you, but he was liable to answer for it: and thus you might have lived to a fair old age, and ended your days in peace; but you have chosen the quite contrary, for the law provides likewise for the punishment of wicked and offending persons, among which number you are found by a jury of twelve able men of your country; and therefore the sentence of the law is this,

‘That you be both, and each of you, taken from this place, to the place from whence you came, and there your irons to be struck off, and from thence to the place of execution, and there you shall be hanged by the neck till you are dead, and the Lord have mercy upon your souls.’

And now let me give you advice: your time is short, spend it well, and flatter not yourselves with the hopes of a reprieve or pardon: and for you, Poor, you have shortened the work of your life; you have gone a great way towards

heaven, if that restitution you made was out of conscience. Mr. Sheriff, let them have a confessor sent to them, for Saturday is the day of their execution.

‘The women, their friends, setting up their cry in the court,’

L. C. J. They did not cry thus when the cows were brought home to them, they were busied then in the killing and the powdering them up.

The Copy of a Protection or Pass, given by an Irish officer to some notorious robbers of the county of Wicklow.

“I James Byrne, ensign to captain Charles Byrne, do hereby certify to you, Terlagh Kelly, Patrick Byrne, and Patrick M’Teige, and William Doyle, to save you harmless from any misdemeanors whatsoever. As witness my hand this 24th of April, 1689.

“JAMES BYRNE.”

The following Letter being sent by the Lord-deputy to the judges of Assize, was read in court to the grand-jury, &c.

By the Lord-deputy General, and general Governor of Ireland.

“After our hearty commendations, we greet you well. As his majesty was graciously pleased to entrust us with the government of this his kingdom, so upon the invading of England, and upon receiving certain information, that the prince of Orange doth intend also to invade this realm, we have, for the defence thereof, raised a considerable army, far above what could be maintained by the king’s revenue at the best of times, and when the trade of this country was in the most flourishing condition. This we have done by the king’s command, to support his regal authority, crown and dignity, and to preserve the lives, liberties and properties of all his liege people within this kingdom. And since our dangers are at hand, and that we may daily expect the landing of an enemy, who intends the subversion of his majesty’s government, and the total destruction of all his good subjects here, we find ourselves under an absolute necessity to keep the king’s army still on foot, in order to our preservation from the approaching dangers. And though we have hitherto with all the care and industry imaginable, and by the generous concurrence of the officers, supported the new-raised forces without being a burthen to any of his majesty’s people; yet considering the decay of trade, the great fall of the revenue in these distracted times, the great charges the officers have been at in subsisting men, it cannot be expected that the standing forces can hereafter be maintained without supplies. And since the same cannot be done by parliament, we cannot think of a more effectual expedient, than by voluntary subscriptions, by way of loan, from the people; which, if generously done, with what may be made of the revenue, may support the army, and will stop all the disorders that may be committed by the soldiers, which we shall always

endeavour to prevent with all the care and industry possible. By this, husbandry may go on as formerly, and we shall be in a capacity to form the army, so as that, with the assistance of Almighty God, we do not doubt to put this kingdom in a perfect posture of defence. We do therefore pray your lordships to recommend this weighty matter effectually at the open assizes in every county when you sit, to all the inhabitants of such counties, and to appoint the respective sheriffs of such counties to procure voluntary subscriptions, by way of loan, from the inhabitants of such counties, of some certain sum of money from each, to be subscribed to their names, to be afterwards satisfied by them respectively, in money, wheat, oats or oatmeal, towards the maintenance of the army, to be paid in, or delivered to the respective sheriffs, or their order, and in such places as the said sheriffs shall respectively appoint, from whom we expect an account of their proceedings herein, and a copy of such subscriptions as shall be made. We do not doubt but every true and loyal subject will, according to his ability, and the excellency of the subject matter, generously and cheerfully contribute towards the carrying on of so great, so necessary, and so glorious a work. We expect your diligent care herein, and so we bid you heartily farewell.

“Your very loving friend,
“From his Majesty's Castle “TYRCONNEL.”
of Dublin, March 2, 1688.”

An Answer to the foregoing Letter being drawn up by the Grand Jury and entered into their book, and presented to sir Henry Lynch, setting forth the extreme poverty of their country, occasioned by the daily ruin of the English, &c. that they were not in a capacity to subsist themselves, and therefore not capable to raise any thing considerable for the army (chief justice Keating returning to Dublin, and leaving baron Lynch to go on to the other counties, &c.) the said Lynch told the Grand Jury, before he discharged them, that the writing they had drawn up, was a reflection and scandal to their country, would be taken very ill by the government, and did not question but it would be brought in hereafter as an evidence against them, and therefore ordered it should be torn out of the book; which was done accordingly.

A gentleman, taken by sheriff Power and the Irish army, with the rest of the prisoners condemned at Galloway, having made his escape for England, writ the following Letter to a friend his relation:

“Dear Brother,

“The excuse that I offer for my not writing is this, that my thoughts were so taken up, what with the misery I apprehended my poor helpless father, mother, wife, and children (which are all dear almost alike to me) were in, and an endeavour to procure some employ,

whereby I should keep them, if they could make their escape, and myself from perishing; God is all-sufficient, who, I doubt not, will provide for us, if we make but a right use of our afflictions. It was my fortune to meet with some friends, that promised, the first men that should be raised, to procure me some employ; but when that will be, is so uncertain, and to live a drone amongst my friends (who are almost in the same circumstance with myself) I looked upon to be so much below a man, that I chose rather to list myself a private centinel, whereby I proposed to be in the road (if my friends missed) to hew out some preferment in the mean time: As to my private condition, since it pleases God to bless me with health, I hope to rest satisfied. Yet I entertain hopes of a merry hunting-bout of my countrymen, of which sport I had a little relishing taste, which serves to sharpen a greedy stomach, that longs to revenge the murder of my dear sister Burdett, and their outrages to my friends.

“I never knew what sorrow was, till I had the account of my sister's death at that dismal gate of Liscarrol; it seemed such to me, for while I staid at it, I made my observation that there was not the least noise, as if all were dead. The apprehension of which did so overwhelm me, that oft on the road (not thinking what I did) I burst out into exclamations, charging myself with being the occasion of bringing my poor aged father, mother, wife, and family, if not to an untimely death, yet to sorrow and misery; which (to aggravate the crime) I looked upon to be the worst condition of the two. When I reached Moyallow, though many endeavoured to divert me, and I apprehended they might apply it to my cowardice, yet I was not able to lift up my spirits, but being put to bed, where I had the benefit of an hour's troublesome sleep, the next morning I resolved to think of nothing but revenge, but having an account of captain Boiles surrendering, which left us without hopes of making any head in Munster, sir Thomas Southwell, capt. Purdon, and about one hundred more of us, resolved to make our way to Sligo. The first day we met with no opposition, and at night baited at a widow's house about six or ten miles from Limerick, where we staid for three or four hours, then mounting with the moon, we marched on; early next morning, capt. Mills overtook us with a party of horse, soon after riding near a strong castle, with a large bawn well walled in; we understood it was fortified by English, where we took an opportunity to refresh our horses, upon which there went a rumour, that my lord of Clare had taken the castle, which made the sparks of the country think them happiest that could reach us first, to share in the plunder. Having advice of it, we drew up near the gate, to receive about 20 horse, that were riding full speed to us; but when they perceived the mistake, they hung their ears, tamely suffering us to disarm and dismount them; but at the request of the

garrison who were loath to leave their families, and understanding by us the state of the country, which might well make them despair of holding out, that they might fare the better, we returned both horses and arms. Thence we marched towards Brian's-bridge, the roads being very bad, we rid scattering, the front at least a mile from the rear, which a party of dragoons perceiving, lay in ambush, and as we moved by, they made about 12 shot at us altogether, which by God's providence did no hurt, most of us that were there being armed with back, breast, and head-pieces; but we soon answered them in their own language, each man firing both his pistols and carbine, before we stirred out of the place, which proved fatal to some of them, two being killed, and a third wounded, which made the rest imagine we were angry, and rudely, without begging our pardon, they run away, but (to little purpose) we imprudently hunted them for two or three hours, their horses being fresh, they got off clear; only one of our bullets happening to overtake the cornet's horse, gave his master an opportunity to exercise his feet for three or four miles with us. The next opposition we met with, was at the bridge in the county of Clare, the end of it being fortified with a strong gate, and near it two houses that commanded each side, but the cowardly soldiers were easily persuaded to set it open, upon our promise that we would do them no hurt, but on the other hand they were threatened (if they did not) to be cut with the gate in pieces. Thence we made towards Killalow, where a company of foot was quartered; when they perceived us coming near, they would fain have fortified themselves in the cathedral, but the poor old bishop refused the key, for which I fear he has sufficiently suffered. Then they bethought themselves to send a messenger to know what we would be at: our answer was, that we designed to hurt none that desired to be peaceable, which they made a promise to be, whereupon we did resolve to make that our stage for that night, so that every man's business was only to find the best quarters he could for himself and his horse. It was my luck to hit where I met a friend, and yet a Papist, who was extremely importunate that I should waive the thoughts of going any further on my design, urging that he did not doubt to make such friends as would protect me and mine with our substance; but if I would not be ruled, my undertaking was so rash, that he feared the next would be of my being hanged or killed among the rest. My reply (with thanks for his kindness) was, that I would make even that doom my choice, rather than it should be said, I flinched for fear; still he was more urgent, till, in short, I gave him to understand, I was so far from having any thoughts of returning home (where I thought I could be no better than a pissing-post to every cur), that if I were at that instant there, I would make it my business, if I could find out any possibility of compassing it, to overtake the party I was then in. Then finding how I

was bent, he charged me not to offer to stay there that night, for that, notwithstanding his promise, the captain sent an express to Limerick, and that he did not question but about midnight they would be upon us, which when I acquainted sir Thomas with, we resolved upon a further march. While some were getting ready, others took occasion to disarm a guard that had the bishop's horses in their custody, which trouble we eased them of; Mr. Hawkins the clergyman's brother, and some of the bishop's servants, went along with us. The arms, according to our promise, we returned, and taking the bishop's blessing, we went that night to Mr. Purdon's, near the Shannon side. As soon as we alighted, I advised sir Thomas to procure a trusty servant of the house to go to Killalow to give us an account if there should any follow us thence, and then William Southwell and I stole to bed, but as soon as we had the benefit of the moon, we made ready to move forward, fearing that our enemies should break Scarriff-bridge, there being a company of them in Tomgreny Castle. Next day, James Power, who is high sheriff of the county of Galloway, having an account the day before of our march that way, he raised the country, and riding out upon the hills as a spy, perceived how our men, as well as our horses, were almost beaten out, and how we were at a loss for the road, which made him so kind as to place guides (for they secured what English there were in the country), but with directions to carry us to a certain pass, where not above two could ride at a time, near which they lined a ditch on the right hand with a company of foot; on the other, behind a rising ground, lay another company, in the midst against the pass they drew up a troop of horse with some volunteers. When they were perceived by us at a distance, we resolved to put the best face on it that we could, and when we came up to the spot, we drew up and shouted, which made the volunteers flinch back, and some run quite away. They made proposals of a composition, which at first were refused, but upon second thoughts, considering (our horses being so harassed) the best way was to fight on foot, and that when our shot should be spent, the rabble (who were at least 2,000) would be worse upon us than those of the army. We agreed to the conditions, which were these, That we should deliver all our horses and arms that were musterable, except those that the gentlemen among us then rid, and their pistols and swords; and that our servants should have sufficient nags given them instead of theirs, and that they should give us passes, and procure us protections, and send us a convoy, if desired. The grey horse was so beaten, that I was forced to alight, and lead him to the front, where I was resolved to appear, though on foot; but there were but few in the company that performed so well, till about half an hour before the rabble falling upon our rear (some of them being so besotted for want of rest, that they fell off their horses) they shot one Morgan

Williams in the head, who lately was a student in Dublin-college, whereupon lieutenant Chinery, myself, and about half a dozen more of us faced about, and making at them, they run away, being at least 400 in number, in which pursuit, the poor grey, making what speed he could in a stony place, came down on all four with such force, what with the weight of my iron doublet, cap, and other lumber, that I thought he had broken all his bones as well as mine; but I soon scrambling up, gave him my helping hand, which was hardly sufficient to get him on his feet, for he was almost quite spoiled with it. When I have the same advantage of my countrymen (which I do not yet despair of) I'll return you as good or better horses than your own, with thanks; in the mean time, the latter is all the reward I can give you. That night, for convenience of lodging, we went to Loghreagh, which was their quarters, where we slept without rocking. The next day, instead of a convoy, they secured us with strong guards at the gates, flattering us that they dared not let us go till they knew the pleasure of the government, and that they would write by their quarter-master so favourably on our behalf, that they did not in the least question, but that our conditions should be performed to a tittle; but I soon smelt out their treachery, which made me resolve to venture on making my escape while I had the liberty of the town; but my friends often dissuaded me from it, still hoping the best, and judging it both hazardous and impossible to be done, for that the very countrymen, as well Irish as English, could not stir a mile without passes. The fourth day I could not brook the haughty looks of the villains any longer, which made me resolve to go on with my design that evening; but about half an hour before the appointed time, unexpectedly one Mahony, who is now a captain in the army, altogether a stranger to me, whispered me in the ear, that he would carry me off to sir Henry Waddington's, who engaged him so to do, being formerly his servant. I was glad to carry my captain's coat under my arm, and lead his horses out of the gate, which I looked on to be the best employment that ever I had; but while I was at sir Henry's, I had the honour to pass for the captain's cousin, and by his name. I had several narrow escapes afterwards, which would be too tedious to write. In three or four days after, from sir Henry's, I had the sad prospect of my friends march towards Galloway-gaol, who, as I was credibly told, had severe usage, and were all condemned to be hanged and quartered; but the late king James landing about that time, their execution was deferred; but it proved no benefit to one Brown, a gentleman of 100*l.* a year near Moyallow; he was of our company, but the last state day we had, whether his horse tired, or he had a desire to run all hazards with his wife and six children, which he left behind, making his way homeward, he was taken, and sent to Limerick, from thence to Cork, where the first gracious

act the king did, was to see him hanged and quartered. However, at the request of some friends, he strained his conscience to grant sir Thomas and the rest a reprieve, which was sent to Galloway by John Raines, a merchant of Moyallow, who was employed by the gentlemen to follow the king to Dublin, with letters to their friends to make interest for their pardons. He happily took Cloghstokin in his way, where I was preferred fortunately to his service, and gravely carried his cloak-bag behind me to Dublin. The embargo being taken off, the first fair wind I set sail, and just as I was ready to go, I met a friend that told me Mr. Handcock was in town, and that he desired to see me, which immediately I made my business, and finding him in his chamber, was very civilly received by him, but we had not many words together, because of other friends that flocked in, some with the news of fresh losses in his stock, which he gave a patient ear to, declaring, that he did not reckon upon any as his own. My time being short, I told him, that I came just to kiss his hand, and that if I made any stay, I should lose my passage. Then taking my leave, he went to the stair-head, where he kindly pressed two guineas upon me, saying, 'That of a little I must take a little,' for that he judged my hurry from home might hinder me from providing money. It was a seasonable kindness, and shall never be forgot, whilst he lives, that is unfeignedly, your affectionate brother,

"T. W."

A LIST of those Protestant gentlemen that are prisoners at Galloway, and who entered their Plea (*Non Cul.*), but afterwards withdrew the same, and submitted to the mercy of the late king James; and were condemned accordingly, March 18, 1688-9.

Sir Tho. Southwell, bt.	William Southwell,
Tho. Mylls,	John Sandys,
Tho. Ponsonby,	Edward Percivall,
John Ponsonby,	Thomas Creed,
William Gunn, sen.	Nicholas Eyres,
Richard Gunn,	Thomas Busted,
William Gunn, jun.	Oliver Walsh,
John Blenerhasset,	Tho. Salmon,
Robert Foulkes,	Garret Foulks,
Thomas Badham,	Daniel Hood,
Arthur Dillon,	John Chinery, sen.
Bartholo. Gibbons,	Robert Bradley,
Stephen Palmes,	Christopher Ely,
John Morris,	James Roberts,
Thomas Purdon,	George Foulks,
Jasper Coxe,	James Keating,
James Howard,	Roger Atkins,
Abraham Cokely,	Andrew Nash,
John Toppin,	Robert Toppin,
Caleb Cokely,	Francis Wise,
Jonathan Bowles,	John Sanders, sen.
Abraham Mylls,	John Sanders, jun.
John Watkins,	Robert Hern,
John Wilkinson,	Edward Raymond,
Richard Conran,	John Atkins,

Benjamin Deacon,
 Nicholas Owens,
 John Benson,
 Tho. Benson,
 John Tedder,
 John Raynes,
 Aaron Stiff,
 John Threadway,
 John Butt,
 Bartho. Purdon,
 Charles Norcutt,
 Tho. Hawkins,
 Stephen Catts,
 Rd. Frankinson,
 James Balf,
 William Sanders,
 Robert Conran,
 Richard Waglin,
 John Maning,
 Edward Pomroy,
 James Cane,
 John Crow,
 John Green,
 Joseph Mee,
 Thomas Allen,
 George Allen,
 Joseph Whiting,
 Thomas Comins,
 Valentine Taylor,
 George Woodman,
 Richard Pennall,
 John Sandford,
 Tho. Collis,
 Christopher Holmes,
 Christ. Hilliard,
 James Huggins,
 William Walker,
 Richard Summers,
 Nathan. Rowles,
 John Colvin,
 John Whitaker,
 Robert Pheby,
 Edward Sanders,
 Peter Raynes,
 Joseph Barnes,
 Richard Chinnery,
 Nicholas Chinnery,
 Walter Ross,
 John Salmon,
 William Salmon,
 William Doe,
 George Ridly,
 John George,
 Roger Long,
 Tho. Lachford,
 Richard Choppin,
 Tho. Williams,
 Hugh Lawson,
 Matthew Choppin,
 Matthew Couch,
 John Brooks,
 David Fitzgerald,
 Tho. Blenerhasset,
 Luke Thomas,
 John Smith,
 Nicholas Conner,
 Robert Pope,

John Laundry,
 Robert Robinson,
 Michael Daly,
 Henry Parr,
 John Frith,
 John Bagnor,
 Edward Oliver,
 Christopher Oliver,
 Joseph Watkins,
 William Howes,
 Richard Simmons,
 Daniel Doer,
 John Hooper,
 John Collyer,
 Henry Portway,
 William Gibson,
 Peter Bayly,
 Matthew Thompson,
 George Hall,
 Henry Thomas,
 John Thomas,
 William Ally,
 Thomas Casey,
 William Uppington,
 John Fowler,
 George Harding,
 Philip Burke,
 William Williamson,
 William Gee,
 John White,
 John Norcott,
 Bartholomew Horne,
 Robert Leven,
 George Bryan,
 Symon Griffith,
 James Graham,
 William Atkins,
 William Armor,
 John Flynn,
 William Sanders,
 Philip Whittington,
 Charles Daly,
 Tho. Curtiss,
 Richard Curtiss,
 William Coxe,
 Hugh Whitlock,
 Francis Barnet,
 Tho. Raynes,
 William Victory,
 Henry Perry,
 Thomas Gibbs,
 Samuel Carter,
 Ralph Emerson,
 William Frye,
 Bennet Beasly,
 George Lane,
 John Ettris,
 John Hull,
 Tho. Thompkins,
 Nathaniel Daniel,
 William Cask,
 John Lewis,
 William Rice,
 Tho. Stringer,
 Philip Teckly,
 William Sawyer,
 Daniel Kalahar,

Tho. Lane,
 John Backhouse,
 Tho. Andrews,
 Hugh Caly,
 Anthony Mackcoagh,
 Joseph Allen,
 Tho. Casy,

Nicholas Purdon,
 Joseph Purdon,
 Katherine Gunn,
 Tho. Moor,
 Joseph Martyn,
 John Morgan,
 Tho. Warner.

The four last named persons escaped; and Mrs. Katherine Gunn (wife to William Gunn, junior, and daughter to colonel Townsend) was acquitted, because she accompanied her husband, (though mounted and armed as the rest of the party were). And when the enemy appeared so numerous, captain Mylls telling them, gentlemen, we have the sword before, and the gallows behind, she courageously seconded him; giving her advice, rather to fight, and die honourably, than to submit to the mercy of their perfidious enemy: for she had resolved, when she came abroad with her husband, to undergo the greatest hardships and dangers they should meet with, than stay at home, and be subject to the insolent abuses of the unmerciful Irish soldiers. Some whereof coming to the house of a gentleman, one Mr. Burdett, his wife great with child, espying them, endeavoured to shut the door, they forced in upon her, and with their pistols shot her dead.

Sir Thomas, and all the other gentlemen, were condemned to be hanged and quartered: the judge persuading them to rely on the mercy of so gracious a prince, for he did not in the least doubt of their pardon; a reprieve being already sent them, before their trial, persuaded them to comply with it. But to this day they remain under the sentence of condemnation, upon a further reprieve obtained by their friends application to the late king, and promise to get the like number of Papist prisoners sent over from England, in exchange for them.

At Birr, in the King's county, three Protestants condemned to die, viz. Sir Lawrence Parsons, knt. Jonathan Darby, gent. James Rascoe, gent.

The articles that were given to sir Lawrence Parsons, upon the surrender of his own house, were brought in against him at his trial, and was the only evidence whereby they condemned him, there being no other evidence but those articles; the judge declaring it was high-treason to article with the king.

At Mariborough, in the Queen's county, 11 Protestants were condemned to die; two of which were executed, (viz.) Thomas Lewis and George Maxwell, being hanged and quartered: two have since made their escape, (viz.) John Lewis and ——— Flaharty, and are said to be gotten for England. Two brothers of the Lindseys, and some others, died in prison.

After the above-mentioned eleven were condemned, baron Lynch being informed by some person, that the prisoners should say, they durst not put them to death, (if they did, the

prince of Orange would revenge their blood) he ordered them to be brought into court in their irons, with ropes about their necks; and examined the jailor, whether he did not hear them say so: he said, he had not heard them say so, since their condemnation: the sheriff taking up the Bible, kissed it, and said, my

lord, by the oath I have taken, I heard them say so last night. Upon which Lynch ordered their execution the day following. But their friends, with others, cried out mercy: so Lewis and Maxwell only were executed. Mr. James the minister, and the other six, are reprieved for some time.

365. The Trials of Sir RICHARD GRAHME, bart. Viscount PRESTON, in the Kingdom of Scotland, JOHN ASHTON, and EDMUND ELLIOT, at the Old Bailey, for High Treason: 2 WILLIAM & MARY,* A. D. 1691.

January 16, 1691.

THE king and queen's writ of Habeas Corpora was sent to the governor of the Tower of London, to bring up the bodies of sir Richard Grahme, baronet, viscount Preston, in the kingdom of Scotland; John Ashton and Edmund Elliot, gents. to the Sessions-House in the Old-Bailey, London; where they were brought between the hours of ten and eleven in the forenoon; and being placed at the bar, were arraigned upon an Indictment of High Treason, found the day before by the grand jury for the county of Middlesex, at Hicks's Hall, in manner following:

Clerk of Arraignments. 'Sir Richard

* See 4 Blackst. Comm. p. 361. East's Pleas of the Crown, Chap. 2, Sections 9, 21, 56, 58, 61, and the authorities there referred to.

The Case of Patrick Harding, which happened about this time, involves some points of law which were considered upon these Trials. Harding's Case is reported, 2 Vent. 315, and Holt, 676. Mr. Williams Wynn has furnished me with the following Note of it, which was found among Sir William Williams's MSS.

"Circa Term: Mich. 1 W. & M. att the Sessions in the Ould Baylie:

"Patrick Harding was indicted for high treason, for that he, the 23d November, 1 Will. & M. maliciously and traiterously did compass, imagine, and intend to depose the King and Queen, and also to kill and destroy the said K. & Q.; and that to this end he levied and raised war and rebellion against them, and listed divers souldiers to war against them, and procured these souldiers to gett out of England, to joyn with other enemies and rebels of the K. & Q. and war against them to wage and support.

"Upon this Indictment the petit jury found this ensuing verdict:—That Patrick Harding, to the intent to depose the K. & Q. and deprive them of their royall dignity, and to restore the late K. James, did, for money by him paid, list, hire, raise and procure sixteen

'Grahme, hold up your hand [which he did, 'and so the other two]: You stand indicted by 'the names of sir Richard Grahme, late of the 'parish of St Anne, within the liberty of West-minster, in the county of Middlesex, baronet; 'John Ashton, late of the parish of St. Paul, 'Covent Garden, in the county aforesaid, gentleman; and Edmund Elliot, late of the 'parish of St. James, within the liberty aforesaid, in the county aforesaid, gent. for that 'you, as false traitors against the most illustrious and most excellent princes William and 'Mary, king and queen of England, defenders 'of the faith, &c. your sovereign lord and lady, 'not having the fear of God in your hearts, nor 'weighing the duty of your allegiance, but

men, subjects of this kingdom, to fight and wage war against the K. & Q., and them did send out of this kingdom into France, to assist and aid the French king, who then was, and yet is, an enemy to the King and Queen, and in open war, and to joyn themselves with the enemys and rebels of and against the K. & Q. in waging war against the K. & Q.: and if upon this the prisoner is guilty of high treason, we find him guilty; but, if not, then not guilty.

"Nine of the Judges of England mett upon this speciall verdict, whereof seaven were of opinion that this was treason, one that it was not, and one doubted; and it was resolved,

"1. That to hire souldiers to joyn with the enemy of the K. & Q. in war against them, to the intent to depose the K. & Q. is high treason.

"2. That declaring by an overt act a design to depose the King and Queen, is an overt act to manifest a conspiracy of their death. Hales' Pl. Cor. 11; 3 Inst. 6, 12. See 29 Hen. 6, cap. 1, being the act of Jack Cade's attainder, and not printed. It was also resolved, that the voluntary confession of the fact before two witnesses, though not upon examination before a magistrate, is sufficient evidence within the statute of 5 E. 6, cap. 11. the latter part of the last section but one, to be given the jury upon the arraignment of the offender. 3 Inst. 25; 2 And. 66."

' being moved and seduced by the instigation
 ' of the devil, the cordial love, and true, due,
 ' and natural obedience which every true
 ' and faithful subject of our said sovereign lord
 ' and lady, the king and queen that now are,
 ' towards them our said sovereign lord and lady,
 ' the king and queen, should, and of right ought
 ' to bear, wholly withdrawing, and contriving,
 ' practising, and with all your strength intend-
 ' ing the peace and common tranquillity of this
 ' kingdom of England to disquiet, molest, and
 ' disturb, and war and rebellion against our said
 ' sovereign lord and lady, the king and queen
 ' that now are, within this kingdom of England
 ' to stir up, move, and procure, and the go-
 ' vernment of our said lord and lady, the king
 ' and queen of this kingdom of England, to
 ' subvert, change and alter; and our said lord
 ' and lady, the king and queen, from the title,
 ' honour, and royal name, of the imperial
 ' crown of this their kingdom of England to
 ' depose and deprive, and our said lord and
 ' lady, the king and queen, to death and final
 ' destruction to bring and put; you the said
 ' sir Richard Grahme, John Ashton, and Ed-
 ' mund Elliot, the nine and twentieth day of
 ' December, in the second year of the reign of
 ' our said lord and lady, the king and queen
 ' that now are, and divers other days and
 ' times, as well before as after, at the parish
 ' of St. Clement Danes, in the county afore-
 ' said, falsely, maliciously, devilishly, and trai-
 ' terously, with force and arms, &c. with divers
 ' false rebels and traitors, to the jurors un-
 ' known, did conspire, treat of, compass, ima-
 ' gine, and intend our said lord and lady, the
 ' king and queen that now are (your supreme
 ' and natural lord and lady), from the royal
 ' state, crown, title, power, and government of
 ' their kingdom of England, to deprive, depose,
 ' and cast down: and the same our lord and
 ' lady, the king and queen that now are, to kill
 ' and bring and put to death; and the govern-
 ' ment of this kingdom of England to change,
 ' alter, and wholly to subvert; and a miserable
 ' slaughter among the subjects of our said lord
 ' and lady, the king and queen, within their
 ' kingdom of England, to cause and procure;
 ' and an insurrection, war and rebellion, against
 ' our said lord and lady, the king and queen
 ' that now are, within this kingdom of England
 ' to move, procure, and aid; and the same
 ' your most evil, wicked, and devilish treasons,
 ' and traitorous compassings, imaginations,
 ' and purposes aforesaid, to fulfil, perfect, and
 ' bring to effect, you the said sir Richard
 ' Grahme, John Ashton, and Edmund Elliot,
 ' as false traitors, then and there, to wit, the
 ' said nine-and-twentieth day of December, in
 ' the said second year of the reign of our said
 ' lord and lady, the king and queen that now
 ' are, and divers other days and times, as well
 ' before as after, at the parish of St. Clement
 ' Danes aforesaid, in the county aforesaid,
 ' with force and arms, &c. falsely, unlawfully,
 ' wickedly, and traiterously, did propose, con-
 ' sult, and agree to procure and prepare great

' numbers of armed men, war and rebellion,
 ' against our said lord and lady, the king and
 ' queen, within this kingdom of England to
 ' levy and make; and that you the said sir Ri-
 ' chard Grahme, John Ashton, and Edmund
 ' Elliot, afterwards, to wit, the same nine and
 ' twentieth day of December, in the aforesaid
 ' second year of the reign of our said lord and
 ' lady, the king and queen that now are, at the
 ' parish of St. Clement Danes aforesaid, in the
 ' county aforesaid, falsely, maliciously, and trai-
 ' terously, did prepare and compose, and then
 ' and there did cause and procure to be pre-
 ' pared and composed, several traitorous let-
 ' ters, notes, memorandums, and instructions
 ' in writing, to shew and inform Lewis, then
 ' and yet the French king, and his subjects,
 ' then and yet enemies of our said lord and
 ' lady, the king and queen that now are, and
 ' very many other evil disposed persons, and
 ' false traitors, to the jurors unknown, of and
 ' concerning the number, force, and condition
 ' of certain ships, for and on the behalf of our
 ' said lord and lady, the king and queen of
 ' England, then and there designed and pre-
 ' pared for the defence of their kingdom of
 ' England, and their enemies aforesaid to repel
 ' and resist; and how some of the same ships
 ' were manned, and of the names of the cap-
 ' tains of several of the said ships; and
 ' how the castles and fortresses of our said
 ' lord and lady, the king and queen, called
 ' Portsmouth, South-Sea, and Gosport, within
 ' the kingdom of England, were strength-
 ' ened and fortified, and how this same castles
 ' and fortresses, into the hands and possession
 ' of enemies and false traitors against our said
 ' lord and lady, the king and queen, might be
 ' taken and seized; as also of the time, places,
 ' ways, manners, and means, by which, when
 ' and where the same enemies of our said lord
 ' and lady, the king and queen, this kingdom
 ' of England might invade and infest; and the
 ' same enemies, and the ships of the enemies
 ' of this kingdom of England, should fight
 ' against our said lord and lady, the king and
 ' queen, and their faithful subjects; as also to
 ' procure, provide, prepare, and obtain against
 ' our said lord and lady, the king and queen
 ' that now are, assistance and armed men,
 ' our said lord and lady, the king and queen
 ' that now are, from their royal state and go-
 ' vernment of this kingdom of England to cast
 ' down and depose, and to stir up, promote, and
 ' procure the aforesaid Lewis the French king
 ' (then and yet an enemy of our said lord and
 ' lady, the king and queen) this kingdom of
 ' England to invade; and to send ships within
 ' this kingdom of England, the city of London
 ' of our said lord and lady, the king and queen
 ' that now are, to plague; as also to cause
 ' very many subjects of our said lord and lady,
 ' the king and queen that now are, to rise, and
 ' war and rebellion against our said lord and
 ' lady, the king and queen, within this king-
 ' dom of England, to move, procure, make,
 ' and levy. And you, the said sir Richard

' Grahme, John Ashton, and Edmund Elliot,
 ' afterwards, to wit, the same day and year, at
 ' the aforesaid parish of St. Clement Danes, in
 ' the county of Middlesex, of and for the same
 ' your treasons and traitorous compassings,
 ' imaginations, and purposes aforesaid, to exe-
 ' cute, fulfil, perfect, and bring to effect into
 ' your hands, custody, and possession, then and
 ' there secretly, knowingly, unlawfully, and
 ' traiterously did obtain, procure, detain, had,
 ' concealed, and kept two several bills of ex-
 ' change then before made, for the payment
 ' of several sums of money to the enemies of
 ' our said lord and lady, the king and queen
 ' that now are; as also very many traitorous
 ' letters, notes, memorandums, and instructions
 ' in writing, then and there composed and pre-
 ' pared with an intent to shew and inform
 ' Lewis, then and yet the French king, and his
 ' subjects, then and yet enemies of our said
 ' lord and lady, the king and queen that now
 ' are, and very many other evil-disposed per-
 ' sons, and false traitors to the jurors unknown,
 ' of and concerning the number, force and con-
 ' dition of the ships, for and on behalf of them
 ' our said lord and lady, the king and queen of
 ' England, then and there designed and pre-
 ' pared for the defence of their kingdom of
 ' England, and to repel and resist their enemies,
 ' and how some of the same ships were manned,
 ' and of the names of the captains of divers of
 ' the same ships, and how the castles and for-
 ' tresses of our said lord and lady, the king and
 ' queen, called Portsmouth, South-Sea, and
 ' Gosport, within this kingdom of England,
 ' were strengthened and fortified, and how the
 ' same castles and forts into the hands and pos-
 ' session of enemies and false traitors against
 ' our said lord and lady, the king and queen,
 ' might be taken and seized: as also the times,
 ' places, ways, manners, and means, by which,
 ' when, and where the same enemies of our
 ' said lord and lady, the king and queen, this
 ' kingdom of England might invade and infest,
 ' and the enemies and ships of the enemies of
 ' this kingdom of England, should fight against
 ' the same, our lord and lady, the king and
 ' queen of England, and their faithful subjects, as
 ' also to procure, provide, prepare, and obtain
 ' against our said lord and lady, the king and
 ' queen, assistance and armed men, to invade
 ' this kingdom of England, and our said lord
 ' and lady, the king and queen that now are,
 ' from their royal state and government of
 ' this kingdom of England, to cast down
 ' and depose, and to stir up, promote, and
 ' procure the aforesaid Lewis the French
 ' king, then and yet an enemy of our said
 ' lord and lady the king and queen, to in-
 ' vade this kingdom of England, and to send
 ' ships within this kingdom of England, the
 ' city of London of our said lord and lady,
 ' the king and queen, to plague; as also to
 ' cause very many subjects of our said lord and
 ' lady, the king and queen, to raise, and war
 ' and rebellion against our said lord and lady,
 ' the king and queen, within this kingdom of

' England, to move, procure, make, and levy.
 ' And you, the said sir Richard Grahme, John
 ' Ashton, and Edmund Elliot, afterwards, to
 ' wit, the thirtieth day of December, now last
 ' past, at the aforesaid parish of St. Clement
 ' Danes, in the county of Middlesex, concern-
 ' ing, and for the same your treasons and trai-
 ' terous compassings, imaginations, and pur-
 ' poses aforesaid, to execute, fulfil, perfect, and
 ' bring to effect, for one hundred pounds in mo-
 ' nies numbered by you the said sir Richard
 ' Grahme, John Ashton, and Edmund Elliot,
 ' then and there paid and deposited, unlaw-
 ' fully and traiterously did hire and prepare,
 ' and then and there did cause and procure to
 ' be hired and prepared a certain ship, and three
 ' men; you the said sir Richard Grahme, John
 ' Ashton, and Edmund Elliot, with the said
 ' bills of exchange, and the aforesaid traitorous
 ' letters, notes, memorandums, and instructions
 ' in writing, into the hands, custody, and pos-
 ' session of you the said sir Richard Grahme,
 ' John Ashton, and Edmund Elliot, secretly,
 ' unlawfully, and traiterously kept, concealed,
 ' and detained, from this kingdom of England,
 ' unto and into France, in parts beyond the
 ' seas, then and yet under the rule and go-
 ' vernment of the said Lewis the French king,
 ' then and yet an enemy of our said lord
 ' and lady, the king and queen, secretly to
 ' carry and transport, with that intent, the said
 ' bills of exchange, traitorous letters, notes
 ' and memorandums, and instructions in writ-
 ' ing, there in parts beyond the seas, to the
 ' enemies of our said lord and lady, the king and
 ' queen, and other evil-disposed persons to de-
 ' liver and disperse; and the said most wicked
 ' treasons, and traitorous compassings and ima-
 ' ginations aforesaid, to fulfil, perfect, and bring
 ' to effect; as also to cause, promote and procure
 ' the aforesaid enemies of our said lord and lady,
 ' the king and queen, to invade this kingdom of
 ' England with ships and armed men. And
 ' you, the said sir Richard Grahme, John
 ' Ashton, and Edmund Elliot, afterwards, to
 ' wit, the 30th day of December now last past, at
 ' the aforesaid parish of St. Clement Danes, in
 ' the county aforesaid, concerning, and for the
 ' same your treasons and traitorous compass-
 ' ings, imaginations and purposes aforesaid, to
 ' execute and fulfil, maliciously, traiterously,
 ' and advisedly, then and there, and diverse
 ' other days and times, as well before as after,
 ' took upon yourselves to very many other trai-
 ' tors to be aiding and assisting in the execution
 ' of the treasons, and traitorous compassings,
 ' imaginations and purposes aforesaid; and
 ' then and there, to wit, the same thirtieth
 ' day of December now last past, at the parish
 ' St. Clement Danes, in the county aforesaid,
 ' maliciously, secretly and traiterously did hire
 ' and prepare, and then and there did cause and
 ' procure to be hired and prepared, a certain
 ' boat, and one man, to the jurors aforesaid un-
 ' known; you, the said sir Richard Grahme,
 ' John Ashton, and Edmund Elliot, from thence
 ' to, and into the aforesaid ship, so as aforesaid

' hired and prepared to carry and convey.
 ' And you the said sir Richard Grahme, John
 ' Ashton, and Edmund Elliot, maliciously and
 ' traiterously into the same boat then and there
 ' did enter; and yourselves from thence, in
 ' and by that same boat unto and into the ship
 ' aforesaid, and there unlawfully and traiterously
 ' did cause and procure to be carried, with the
 ' intention aforesaid. And you the said sir
 ' Richard Grahme, John Ashton, and Edmund
 ' Elliot, with the same bills of exchange, and
 ' the aforesaid traiterous letters, notes, memo-
 ' randums and instructions in writing, and in
 ' your hands, custody and possession then and
 ' there, in and with the ship aforesaid, did sail
 ' and depart towards the aforesaid kingdom of
 ' France, in parts beyond the seas; the same
 ' your most wicked, evil, and traiterous inten-
 ' tions, purposes, compassings and imagina-
 ' tions aforesaid to fulfil, perfect and promote,
 ' against the duty of your allegiance, against
 ' the peace of our said lord and lady, the king
 ' and queen that now are, their crown and
 ' dignity, and against the form of the statute in
 ' that case made and provided. And the in-
 ' dictment further sets forth, that long before the
 ' aforesaid 29th day of December now last past,
 ' open war between our said lord and lady, the
 ' king and queen, and the aforesaid Lewis the
 ' French king, was begun, declared, and waged,
 ' and yet is; which said Lewis the French
 ' king, and his subjects, and the men of those
 ' parts, then and yet were and are enemies to
 ' our said lord and lady, the king and queen
 ' that now are, and to their kingdom of Eng-
 ' land: and that in the time of the aforesaid
 ' war between them our said lord and lady, the
 ' king and queen, and the aforesaid Lewis the
 ' French king, you the said sir Richard
 ' Grahme, John Ashton, and Edmund Elliot,
 ' being subjects of our said lord and lady, the
 ' king and queen that now are, as false traitors
 ' against our said lord and lady, the king and
 ' queen, during the war aforesaid, to wit, the
 ' 29th day of December, in the second year of
 ' the reign of our said lord and lady, the king
 ' and queen that now are, and divers other
 ' days and times as well before as after, at the
 ' parish of St. Clement Danes aforesaid, in the
 ' county aforesaid, with force and arms, &c. to
 ' the aforesaid enemies of our said lord and lady,
 ' the king and queen that now are, unlawfully
 ' and traiterously were adhering and assisting,
 ' and in execution and performance of the
 ' same adhering, you the said sir Richard
 ' Grahme, John Ashton, and Edmund Elliot,
 ' then and there, to wit, the same 29th day of
 ' December, in the second year of the reign of
 ' our said lord and lady, the king and queen
 ' that now are, abovesaid, at the aforesaid
 ' parish of St. Clement Danes, in the county
 ' aforesaid, falsly, maliciously, and traiterously
 ' did prepare and compose, and then and there
 ' did cause and procure to be prepared and
 ' composed, as also into your custody and pos-
 ' session then and there unlawfully, secretly,
 ' and traiterously, did obtain, detain, conceal,

' and keep divers traiterous letters, notes, me-
 ' morandums, and instructions in writing, to
 ' shew and inform the aforesaid Lewis, then and
 ' yet the French king and his subjects, then and
 ' yet enemies of our said lord and lady, the king
 ' and queen that now are, of and concerning
 ' the number, force, and condition of certain
 ' ships, for and on the behalf of our said lord and
 ' lady, the king and queen of England, then and
 ' there designed and preparing for their de-
 ' fence of their kingdom of England, and their
 ' enemies aforesaid to repel and resist; and
 ' how some of the same ships were manned, and
 ' of the names of several of our captains, of the
 ' said ships; and how the castles and fortresses of
 ' our said lord and lady, the king and queen, call-
 ' ed Portsmouth, South-Sea, and Gosport, within
 ' this kingdom of England, were strengthened
 ' and fortified, and how those same castles and
 ' fortresses into the hands and possession of the
 ' same enemies of our said lord and lady, the
 ' king and queen, might be taken and seized;
 ' as also of the time, places, ways, manners,
 ' and means, by which, when and where the
 ' same enemies of our said lord and lady, the
 ' king and queen that now are, this kingdom of
 ' England might invade and infest; and they
 ' the said enemies, and the ships of the said
 ' enemies of this kingdom of England should
 ' fight against our said lord and lady, the
 ' king and queen, and their faithful subjects.
 ' And that during the war aforesaid, to wit, the
 ' aforesaid 30th day of December now last past,
 ' you the said sir Richard Grahme, John Ashton,
 ' and Edmund Elliot, at the aforesaid parish of
 ' St. Clement Danes, in the county aforesaid,
 ' unlawfully and traiterously did hire and pre-
 ' pare, and then and there did cause and pro-
 ' cure to be hired and prepared a certain ship,
 ' and three men, you the said sir Richard
 ' Grahme, John Ashton, and Edmund Elliot,
 ' with the same traiterous letters, notes, memo-
 ' randums, and instructions in writing, from this
 ' kingdom of England, unto and into France
 ' in parts beyond the seas, then and there under
 ' the rule and government of the aforesaid
 ' Lewis the French king, then and yet an
 ' enemy of our said lord and lady, the king and
 ' queen, secretly, during the war aforesaid, to
 ' carry and transport, to the intent the same
 ' traiterous letters, notes, memorandums, and
 ' instructions in writing there, in parts beyond
 ' the seas, to the aforesaid enemies of our said
 ' lord and lady, the king and queen that now
 ' are, to deliver, and disperse during the war
 ' aforesaid, in aid of the said enemies of our
 ' said lord and lady, the king and queen, in the
 ' war aforesaid: and that you the said sir
 ' Richard Grahme, John Ashton, and Edmund
 ' Elliot, during the war aforesaid, to wit, the
 ' aforesaid 30th day of December now past, at
 ' the parish of St. Clement Danes, in the
 ' county aforesaid, concerning, and for the
 ' same your treasons and traiterous adherings
 ' and purposes aforesaid to execute and fulfil,
 ' maliciously, traiterously, and advisedly, then
 ' and there did hire and prepare, and then and

‘ there did cause and procure to be hired and
 ‘ prepared a certain boat, and one man to the
 ‘ jurors unknown, you the said sir Richard
 ‘ Grahme, John Ashton, and Edmund Elliot,
 ‘ from thence to and into the ship aforesaid, by
 ‘ you as aforesaid hired and prepared to carry
 ‘ and convey : and that you the said sir Richard
 ‘ Grahme, John Ashton, and Edmund Elliot,
 ‘ maliciously and traiterously into the same
 ‘ boat, then and there did enter, and yourselves
 ‘ from thence secretly in and by the same boat
 ‘ unto and into the same ship, then and there
 ‘ did cause and procure to be carried, in prose-
 ‘ cution of the adhering aforesaid. And you
 ‘ the said sir Richard Grahme, John Ashton,
 ‘ and Edmund Elliot, then and there with the
 ‘ same traiterous letters, notes, memorandums,
 ‘ and instructions in writing, in your custody
 ‘ and possession being, during the war aforesaid,
 ‘ to wit, the same day and year, in and with the
 ‘ ship aforesaid did sail, and depart towards the
 ‘ aforesaid kingdom of France, to the intent the
 ‘ same traiterous letters, notes, memorandums,
 ‘ and instructions in writing, in parts beyond
 ‘ the seas, to the said enemies of our said lord
 ‘ and lady, the king and queen that now are, to
 ‘ deliver, concerning and for aid, intelligence,
 ‘ and council, by you the said sir Richard
 ‘ Grahme, John Ashton, and Edmund Elliot, to
 ‘ the same enemies of our said lord and lady,
 ‘ the king and queen that now are, to give and
 ‘ yield, during the war aforesaid, against the
 ‘ duty of your allegiance, against the peace of
 ‘ our said sovereign lord and lady, the king and
 ‘ queen that now are, their crown and dignity,
 ‘ and against the form of the statute in that
 ‘ case made and provided.’ How say you, sir
 ‘ Richard Grahme, are you guilty of this felony
 ‘ and high treason whereof you stand indicted, or
 ‘ not guilty ?

Lord Preston. My lord, I have something
 humbly to offer to your lordships.

L. C. J. Holt. What is it your lordship
 would say ?

L. Preston. My lord, I find I stand indicted
 by the name of sir Richard Grahme, baronet,
 but I do take myself to be entitled to another
 way of trial, as being a peer of England, by
 virtue of a patent before the vote of abdication
 was made ; and it was in a time when all your
 processes and all your writs went in the king’s
 name, and all officers acted by virtue of his
 commissions. My lord, this is a matter that
 concerns me in point of life, estate, posterity,
 and all that is dear to me ; and therefore I de-
 sire to know whether your lordships think fit
 to allow me my peerage ; I offer it, my lord,
 with all the respect and modesty imaginable.

L. C. J. Holt. My lord, I apprehend your
 lordship to offer against your being tried here,
 that you are a peer.

L. Preston. I take myself to be so, my lord.

L. C. J. Holt. My lord, you must make
 that out to the court.*

L. Preston. I told your lordships the ground
 of my claim and apprehension : it is from a
 patent I received before the vote of abdica-
 tion, when all commissions, and all process,
 and all the courts of judicature run in that
 name.

L. C. J. Holt. Where is that patent, my
 lord ?

L. Preston. It is in the hands of the House
 of Lords.

L. C. J. Holt. My lord Preston, we cannot
 take notice of that patent : if your lordship
 plead that you were made a peer by a patent
 under the Great Seal of England, you must
 produce it under the Great Seal, that the court
 may see what it is, and whether it be sufficient
 to justify your plea.

L. Preston. I hope your lordship and this
 court will enable me to do that, by sending an
 order to the clerk of the House of Lords, to
 bring the patent hither ; for it is in his hands.

L. C. J. Holt. My lord, that is not in our
 power : if your lordship take yourself to be a
 peer, and would thereby stop this court from
 proceeding to try you, you must be ready to
 make it out.

L. Preston. I am ready to make it out : if
 I had my patent here, that would make it out.
 Certainly there is some authority now in being
 (I humbly offer it with all submission and
 respect) that may order the clerk of the House
 of Lords to attend this court, and produce this
 patent.

L. C. J. Holt. My lord Preston, we are not
 to enable you to plead to the jurisdiction of
 the court.

L. Preston. My lord, I offer it with all re-
 spect to the court : I am concerned in it for my
 life, and my all, and if that be over-ruled, this
 I hope you will do before you go on, you will
 hear me by my counsel.

L. C. J. Holt. My lord, it is nothing that
 you have said ; for if your lordship plead this
 plea to the jurisdiction of the court, it ought
 not to be received without shewing your
 patent.

L. Preston. My lord, I desire my counsel to
 be heard to this matter.

L. C. J. Holt. I know your lordship has had
 the benefit of counsel, and I know your counsel
 must tell you, that what you say goes for no-
 thing, unless you put in your plea, and pro-
 duce your patent, that the court may judge
 upon it.

Solicitor General. (Sir John Somers.) My
 lord, I have observed what my lord Preston
 has mentioned——

L. Preston. Pray, Mr. Solicitor, will you
 speak out, that I may hear what you say ?

Sol. Gen. My lord, I say, I have taken
 notice of what your lordship has offered : it
 has been most truly observed by the court, that
 it is your lordship’s part to make good your
 plea, and it ought not to be expected that any
 court should help a person to plead to its juris-
 diction : but because it should not be pretended
 that an advantage was taken against the pri-

* See the Case of Knollys (claiming to be
 earl of Banbury) in this Collection.

soner for a defect in point of form, or that any thing was insisted on which should have the least appearance of a hardship, that we may proceed in the most clear and unexceptionable manner that can be, I must beg leave to observe to your lordship and the court, how far this matter which my lord Preston has insisted on, has been debated and determined in another place.

L. C. J. *Holt*. So ; on, Mr. Solicitor.

Sol. Gen. My lord, upon the 11th of November 1689, my lord Preston did make some claim in the House of Lords that he was a peer of the realm. The House of Lords demanding of him upon what he founded his pretence ; he said he claimed by letters patent from the late king James, which passed the Great Seal before the time of the vote of abdication. The lords required that those letters should be produced, which being done, and my lord Preston insisting upon his claim to be a peer of England, the lords thought fit that day to commit my lord Preston to the custody of the Black Rod. The next day being the 12th of November, upon solemn debate of the validity of these letters patents, and consulting with the judges then present, the lords, *nemine contradicente*, did adjudge and declare those letters patents to be void and null : and by another order of the same date, they did order Mr. Attorney General to prosecute my lord Preston in the King's Bench for a high misdemeanor, in presuming to claim peerage by those letters patents. And by a third, it was ordered, that the letters patents should remain in custody of the clerk of the parliament. Thus you see, my lord, this matter hath had already a solemn determination in a court which had the most proper cognisance and jurisdiction of claims in this nature. And they having pronounced their judgment, I did not think it would have been urged again in this place. I thought it proper to mention these things, to shew how it comes to pass that my lord Preston has not his letters patents to produce, and to satisfy every man that there is no hardship put upon my lord Preston, by trying him here, when he ought to be tried by another judicature. The lords have given judgment against these letters patents, and have ordered that they shall remain in custody of the clerk of the parliament, and my lord Preston is not a stranger to these transactions ; and therefore if my lord's counsel had been of opinion he could have made any use of them, they would have informed him he must have taken another course to have got them, and could not expect this court should make an order for him, contrary to the order of the House of Lords, to take the letters patents out of the hands of the clerk of the parliament, and this, to help him to a plea against their own jurisdiction. I omitted one thing, that upon the 27th of the same month of November, upon my lord Preston's humble submission and petition, his lordship was discharged of his imprisonment, and the House of Lords were pleased to remit

the order given to Mr. Attorney, for prosecuting him in the King's-Bench for the misdemeanor : so that I cannot but wonder to hear of this claim of peerage after that submission. But there is nothing offered to the court by my lord, that the court can take any legal notice of. If my lord will plead any thing to the jurisdiction of the court, he ought to have his plea in form, and be ready with his proofs to make it good.

Serj. Thompson. My lord Preston, upon this last order of the House of Lords, has disclaimed any right of peerage when he made his petition, otherwise he had not been discharged.

L. *Preston*. My lord, I beg leave—

Serj. Thompson. Besides, my lord, what my lord Preston offers is a matter of record, as all letters patents are ; and though out of his hands, he might have had recourse to the record of the enrolment.

L. *Preston*. For that, my lord, I must humbly beg of your lordships a little time to put myself in a capacity to plead it in form. If you will over-rule it, I can say nothing to it ; I offer it with all the modesty and respect imaginable.

L. C. J. *Holt*. It shall do your lordship no prejudice, my lord : God forbid but that you should make use of all advantages that you can invent for your defence ! But, my lord, we must tell you, what you have offered is nothing that we can take any notice of, unless you had your patent to produce ; and we cannot give your lordship time to plead to the jurisdiction of the court.

L. *Preston*. Then if your lordships are pleased to over-rule this matter, I submit ; but I hope you will give me leave to make all the just defence I can make for myself. Does your lordship over-rule me in it ?

L. C. J. *Holt*. I suppose we are all of the same opinion ; if not, I suppose they will declare their minds.

L. C. J. *Pollexfen*. That which has been said by Mr. Solicitor, was only that you and all the world may be satisfied, that there is nothing of hardship put upon you. But the court, if this had not been said, yet could take no notice of what you say, unless it were pleaded, and pleaded in legal form. But if the matter be as the king's counsel have represented it, that this patent you now pretend to have, hath already had its determination in a proper place ; this court, which is an inferior court to that of the lords in parliament, cannot intermeddle with it. We cannot help you, nor can we set up what was condemned there. So that you can entertain no hope or expectation of our doing any thing for you in this matter, or any relief or help by such a plea.

L. C. *Baron*. (Sir Robert Atkins.) My lord Preston, you may remember (I am sure some of us that were there present do) that you did decline further insisting upon this matter in the House of Lords ; and thereupon you had that great favour from the House shewn you, as the king's counsel have opened.

L. *Preston*. I did decline it, it is true, my

lord: when they had declared it a misdemeanor, I made my application to the court, and therein declared I was sorry for having misdeemeaned myself.

Serj. *Thompson*. If your lordships please, we will read the very orders of the House of Lords, to satisfy my lord Preston, that we put no hardship upon him.

L. *Preston*. If there be any thing of hardship upon me in this case, it is because I think I have a right to insist upon this matter, and cannot have an occasion or power to have that which I would make my defence by.

L. C. J. *Holt*. Your lordship shall have a fair trial, if you will please to put yourself in a condition to be tried, by pleading to the indictment.

Baron *Lechmere*. The lords in parliament have disclaimed you for being a peer, and we cannot make you one.

L. *Preston*. My lord, I hope your lordships will put no hard thing upon me, but give me leave and your lordships' help to make my defence.

L. C. J. *Holt*. You shall, by the grace of God, have all the liberty you can desire to make your defence; but you must first plead.

L. *Preston*. Since your lordships are pleased to over-rule me in this case, I shall say no more of it. I did not intend to offer any thing that might be an offence to the court.

L. C. J. *Holt*. As I told your lordship before, so I assure you now again, it shall do you no prejudice.

L. *Preston*. Then, if your lordship please, since the language is different in which the indictment is written, from that in which it was read, and some things may be of different signification in both languages, I desire the indictment may be read in Latin.

L. C. J. *Holt*. Read it in Latin.

L. *Preston*. I have one thing to beg of your lordship before it be read.

L. C. J. *Holt*. What is it you desire, my lord?

L. *Preston*. My lord, I humbly desire because I cannot retain all the contents in my memory, that my solicitor may have leave to stand by me.

L. C. J. *Pollexfen*. Do you all join in this desire? For if you should each of you severally have it read a great many times over, they that take notes in short-hand may take a copy of it, as it is read, and a copy is not to be allowed.

L. C. J. *Holt*. If we find they desire to be troublesome, we can over-rule them.

L. *Preston*. I would be guilty of nothing that may give the court offence, nor offer any thing that should take up the time of the court unnecessarily.

L. C. J. *Holt*. If they would have it read in Latin, let it be read.

L. *Preston*. If it be troublesome to the court, I waive it, my lord.

L. C. J. *Holt*. No, we do not think it troublesome.

VOL. XII.

L. C. J. *Pollexfen*. Mr. Ashton, and Mr. Elliot, do you desire to have it read again?

Ashton, Elliot. We all join with my lord, and desire it may be read in Latin.

L. C. J. *Holt*. Read it. [Which was done.]

Cl. of Arr. 'Juratores pro Domino Rege et Domina Regina, super Sacramentum suum præsentant quod—et contra formam Statuti in eo casu editi et provisi.'

L. *Preston*. My lord, I am sorry I have taken up so much of your time; I thought the difference of language might have made some mistake, which I thought would be of advantage to me in my trial: and for the same reason, I humbly request you will please to order me a copy of the indictment.

L. C. J. *Holt*. My lord, that we cannot do; it hath been frequently demanded upon these occasions, but always denied. I have always known it denied.

L. *Preston*. Your lordship will give me leave to say, what your lordship must needs know much better than I: there is a statute in the 46th of Ed. 3. that doth order a copy of any record to any prisoner, or other person, if he demand it: and it has been granted, as I am informed, in other cases, particularly in the case of colonel Sidney.

L. C. J. *Holt*. No, my lord; it was denied in colonel Sidney's case.

L. *Preston*. If I mistake, I beg your lordship's pardon. It is a reason in a late law made for the reversal of Mr. Cornish's attainder. The parliament do there say, that it was not a legal trial, because he had not a copy of the indictment, and time given him to prepare for his defence.

L. C. J. *Holt*. Truly, my lord, I do not know how that matter stands: that reversal of Mr. Cornish's attainder is but a private act of parliament. I never saw it, nor heard it read, nor can we take notice of it. But your lordship is to be tried by the same methods of law that all persons that have gone before you have always been. It has always been the course, that the prisoner should not have a copy of his indictment: colonel Sidney had it not; and I remember, in the case of sir Henry Vane, in the year 1662, he demanded a copy of the indictment, and it was denied him; and it has been constantly denied ever since in such cases.

L. *Preston*. I humbly desire to know, whether it was not granted in the case of my lord Russel?

L. C. J. *Holt*. No, indeed, my lord; my lord Russel had it not; I can take it upon me to say that, for I know all the proceedings in that cause.

L. C. J. *Pollexfen*. No, my lord; never any man had it, in all my experience.

L. C. J. *Holt*. Some of us that are here were of counsel for my lord Russel at that time; and we did not advise him to demand a copy of the indictment, for we knew he could not have it by law.

L. *Preston*. I am very tender of taking up your lordships' time unnecessarily, but it stands

me upon to do all I can to defend myself; may not I have my counsel heard to that point? because, if it be a point of law, though your lordships are of counsel for the prisoner, yet I beg that I may have my counsel heard to argue it.

L. C. J. Holt. To what point would you have your counsel heard?

L. Preston. To that point, whether I may not have a copy of my indictment, according to the 46th of Ed. 3. That is the point I would have my counsel heard to.

L. C. J. Holt. There is no such statute as your lordship mentions, that gives the prisoner a copy of his indictment.

Mr. Jones. If your lordship please to hear me for my lord Preston—

L. C. J. Holt. Nay, Mr. Jones, you are mistaken in this matter. If my lord himself will shew that there is any such statute, we will consider of it; and if it be a matter that requires debate, we may assign my lord counsel to argue it; but till then counsel are not to be heard. My lord Preston, if your lordship can shew us that statute, pray do.

L. Preston. My lord, I desire none, if it be not so.

L. C. J. Holt. I have heard a discourse concerning such a statute, but I could never find it.

L. Preston. I suppose my solicitor is here with it; there is such a statute, my lord.

L. C. J. Pollexfen. The court over-ruled it in the case of sir Henry Vane.

L. C. J. Holt. And so it was, I remember, in another case; and in none of the trials that have been since king Charles the Second came in, was ever a copy given, that I know or heard of.

Sol. Gen. My lord, this statute that my lord Preston mentions, 46 of Ed. 3, is printed at large in the Preface to my lord Coke's third Report; and has been insisted upon in several cases in the King's-Bench, where the prisoner has desired a copy of his indictment; but a copy has been always denied: and this statute has been taken to extend only to records which may be evidence for the subject.

L. C. J. Pollexfen. 'Twas always ruled, that it did not extend to this matter.

L. C. J. Holt. My lord, it is a misconstruction of that statute, that your lordship thinks that it gives the prisoner a copy of his indictment: for that statute says, that all persons shall be free to make use of the public records, and take copies of them, because oftentimes the records are evidences of men's estates, and their titles.

L. Preston. My lord, an indictment, I suppose, is a record?

L. C. J. Holt. But not such a record as is within the intent of that statute.

L. Preston. My lord, I am tender of taking up your lordships' time; but since all that is dear to me is at stake, I desire to this point I may be heard by counsel.

L. C. J. Pollexfen. My lord, I am satisfied

you have had counsel with you; I have heard a great many. Does any one of them tell you, that this has been done? If ever any one of them will come and shew us when it has been done, you say something; but I dare say none of them will, or can. Mr. Jones, there, is as like as any body; but I believe he will not say it ever was done.

L. Preston. My lord, I cannot say my counsel has told me so, but I have read such a statute myself; for it stands me upon it, and I believe there is such a statute, and it will be produced before your lordships. If your lordships will insist upon not allowing me a copy, I desire I may be heard to it by my counsel; for I take it to be a point of law, with humble submission to your lordships.

L. C. J. Holt. My lord, we must not hear counsel to debate plain points that have no manner of question in them: it has been always disallowed; and it is a settled point at law, and as plain as any whatsoever, that no copy of an indictment ought to be allowed to a prisoner in felony or treason.

L. Preston. My lord, there is a statute that says, it shall be allowed to all persons to have copies of records, as well for as against the king; and certainly the indictment is a record, and a record of great consequence to me at this time; and though my counsel has not told me when it was done, yet those that I have advised with do say, that the statute is express.

L. C. Baron. If any doubtful words be in such a statute, yet the constant practice must expound it; and since it has been so often denied, nay always, the law is now settled, that it is not within the meaning of that statute.

L. C. J. Holt. We must go in the way of our predecessors; we received the law from them, and must not contradict the received practice or the judges in all ages, nor alter the determinations that have been made in all cases of the like nature.

L. Preston. I hope your lordships intend, and I don't question it, that my trial should be a legal trial. If there be such a statute gives me a copy of the indictment, and the court deny it me, I am not legally tried.

L. C. J. Pollexfen. If you please to name the statute, my lord, it shall be read to you; but you are mistaken if you think there is any thing in that statute that will do your lordship service in this point.

L. C. J. Holt. See the 46th of Ed. 3. Read it.

L. Preston. Here is a copy of the record in court.

L. C. J. Pollexfen. It is not printed, but it is mentioned in the preface to my lord Coke's third Report, and it is mentioned no where but there that I know of; but whether there were any such statute or no, *non constat*; for it is not printed. But if it be a statute, it does not meddle with things of this nature, such as indictments; for you must consider, my lord, your's is not a case different from all other cases of like nature as to this; but it is the case of all

men that are tried as you are to be. And if all people were to have copies of their indictments to make exceptions out of them before they plead, instead of days of gaol delivery, the whole year would not be sufficient, but would be spent before they could be brought to their trial.

L. Preston. My lord, I am to defend myself as I can by law, and not to consider what other people's cases are. It is my particular case now; what the case may be as to any other hereafter, or what the general consequence may be, is not to be considered; but if there be any thing that is legal, that can give me an advantage in making my defence, I know your lordships are too just to hinder me from taking advantage of it.

L. C. Baron. My lord, it is no new thing to demand it; it has been frequently demanded, but it has been always over-ruled.

L. Preston. My lord, it is now desired, and a reason is given you that perhaps was not given before: there is such a law. My lord chief justice says well, it is not printed, but it is a record, and there is a copy of that record in court. I desired there should be, I am sure.

L. C. J. Holt. If you have a copy of any record of an act of parliament, it shall be read, if it be proved.

L. Preston. Nay, we offer nothing if we do not prove it; but there is such a record, and the Solicitor is ready to attest it. Pray swear *Mr. Whitaker.*

Serj. Thompson. Swear him.

Cl. of Arr. You shall true answer make to all such questions as shall be demanded of you by the court. So help you God. Is this a true copy?

Mr. Whitaker. It is a true copy.

L. C. J. Holt. Where did you examine it?

Mr. Whitaker. My lord, it is a true copy of the record; I examined it at *Mr. Pettyt's* office in the Tower.

L. C. J. Pollexfen. Upon what number roll is it?

Mr. Whitaker. There is the number roll and all upon the book.

Clerk reads. 'Item pria les Commons que come recorde & queconque chose en la court le roy de reason devoient demurrer illeques pur perpetual evidence & eide de tous partie a ycelly & de tous ceux a queux en nul man-ner illis atteignent quant, mestier leur fuit. Et ja de nouvel refusent en la court nostre dit seignior de serche ou evidence encountre le roy ou disadvantage de luy. Que please os deiner per estatute que serche & exemplification soit faitz as toutz gentz de queconque recorde que les touche en ascun manner auxy bien de ce que chiet encountre le roy come autres gentz. Le roy le voet.'

L. C. J. Pollexfen. It is only copies of records that they shall have for evidence.

L. C. J. Holt. My lord *Preston*, your lordships hears by this record, you may as well pray that an exemplification be made of this indictment as a copy; for so the words of this

act run; it is only meant of those records that were to be given in evidence. But this indictment that you would have a copy of, is not now to be given in evidence, nor to be exemplified, and so it does not reach your case.

L. Preston. My lord, this indictment is a record, and a record against me, and I think it is given in evidence against me.

Mr. J. Eyres. No, my lord, it is no evidence, but an accusation; it is no proof at all.

L. Preston. It is always sworn unto.

Mr. J. Eyres. The witnesses are sworn that testify the matter of it to the grand jury, but the indictment itself is no evidence.

L. C. J. Holt. Suppose a statute be doubtful, as truly I do not take this to be, we are to expound the statute as it has been expounded in all ages. It was never thought by any judges in any reign, that this statute did entitle a prisoner to have a copy of his indictment, but always held the contrary.

L. Preston. Will your lordship be pleased then to allow me counsel to be heard to it?

L. C. J. Holt. No, my lord, not counsel in a plain case: if the court apprehend there is any matter that may be debateable, or whereupon a doubt may be made, we may assign counsel, and shall; but never in a plain case, where there is no manner of question.

L. Preston. My lord, here is a doubt in this case.

L. C. Baron. But, my lord, it's not the doubt of the prisoner, but the doubt of the court, that will occasion the assigning counsel.

L. Preston. But the prisoner may offer his doubt to the court, and your lordships are so just, that you will take care that the doubt may be legally resolved.

L. C. J. Holt. My lord, it is our duty to see justice and right done, and, God willing, it shall be.

L. Preston. And I am bound in duty to myself, in such a case, to insist upon all advantages I can have by law.

L. C. J. Holt. My lord, nobody blames you, though your lordship do urge things that are unnecessary, or improper; and we shall take care that it shall not tend to your lordship's prejudice. We consider the condition you are in; you stand at the bar for your life; you shall have all the fair and just dealings that can be; and the court, as in duty bound, will see that you have no wrong done you.

L. C. J. Pollexfen. My lord *Preston*, for this thing that you now mention, in all ages, in all our books, it is the same thing, and has been in all men's cases, that have been for their lives, denied; and this statute that you bring is quite of another intent; for it is said, the records shall remain in court for perpetual evidence, and the aiding of all persons to whom they shall belong. My lord, this is none of your case; for God knows, you expect no aid from this indictment: but this is meant of all copies that concern the estates of men, that they may have recourse to their records to make out their evidences to their estates, or to

have them exemplified under the seal of the court for evidence: but to have a copy of an indictment, thereby to be enabled to consult with counsel how to make exceptions to that indictment, is a thing that has been denied in all ages, by all the judges that ever were. If any one can say to the contrary, it were something; but shall we now admit counsel to debate a thing that has been in all ages denied, and never admitted so much as once? That cannot be expected from us.

L. Preston. The act says, that it shall be all records that shall be in aid to any person that shall desire it. Here is no distinction made of what kind the records are to be. If it be for the aid of any person, it ought to be granted, and I may be aided by this record, if I have a copy of it; and I think it is hard, when I am so much concerned in this record, that I cannot be helped to it by this law.

L. C. J. Pollexfen. Constant experience has gone according to what we say.

L. Preston. If that be law, and it has not been demanded, then they are not entitled to have the benefit of it: but now I demand it, sure it is good law.

L. C. J. Holt. It is no question a good law, but not applicable to your lordship's case: I suppose we are all of the same opinion; if any think otherwise, I desire they would speak.

L. Preston. My lord, I submit to the court, but then I desire one thing. You know my life, my fortune, my reputation, my posterity, and all are at a stake, and all that is dear to me must fall with me if I miscarry: therefore I take leave to represent, that I have had very short notice of my trial. I do assure you, I have not had above six or seven days notice: I hope you will not refuse me a little longer time before I come to my trial; and I have had no copy of the jury yet.

Sol. Gen. If my lord please to plead to the indictment, that will be time enough to move afterwards, and till issue is joined, it cannot properly be moved for.

L. C. J. Holt. It is not proper to desire time yet, till you have put yourself upon your trial, by pleading to the indictment.

L. Preston. It was granted in colonel Sidney's case, he had eight or ten days granted him after he had pleaded; and in the act for the reversal of Mr. Cornish's attainder, it is given as one cause for the reversal, that he had not time to prepare for his defence.

L. C. J. Holt. My lord, seven days is very fair notice. Your lordship knew when the sessions would be, and your lordship might reasonably expect, that you should be tried here: I think truly you have had very fair notice.

Mr. Ashton. My lord, we have had seven days notice of our trial, it is true. This day sevennight, at night, we had notice we were to be tried as this day; but three of the seven we had not the liberty of seeing any friend, or counsel, or any body, not till Tuesday night, and that we got with great application, and

great charge to get an order for counsel to come to us: so that though we had seven days notice, yet we have had but three days in all to consult with any body; and we never had a copy of our jury till this minute.

L. C. J. Pollexfen. We see the nature of the thing, and I am sorry that I must say it is fit that we should take notice of it. Perhaps the thing that you are accused of is not true; but if it be true, you see what it is, that there are letters and papers preparing for a design to set all the kingdom in confusion. Men that will venture upon such sort of things, are not to condemn the law, if it be a little hard upon them; for it is the common preservation that is principally aimed at in prosecutions of this nature; and if this accusation be true, it is but just and reasonable, that all speed should be used to inquire into, and prevent it; and as it falls out in this case, it is not in our power to do it. This sessions is set before this business is known, and this is an act done in this county, and therefore the sessions is the proper place for the trial; and so you have the same sort of proceedings that all other criminals have, which are very many, though I hope not many of so high a nature. Seven days notice you have had, you acknowledge; if my lords please we will indulge you as far as we can, and give you time for your trial till to-morrow, but you must plead presently.

L. C. J. Holt. My lord, we debate the time of your trial too early; for you must put yourself upon your trial first, by pleading.

L. Preston. My lord, I hope I shall always carry myself as becomes me towards the court; but I do not really think that you have any trials that are of so great concernment, and this sure is a fit time for me to offer it; for it may be I have a great many witnesses in the country, and at distance from this place, and one another.

L. C. J. Holt. My lord, we cannot dispute with you concerning your trial, till you have pleaded. I know not what you will say to it, for aught I know there may be no occasion for a trial. I cannot tell what you will plead; your lordship must answer to the indictment before we can enter into the debate of this matter.

L. Preston. Will your lordship give me leave to move it afterwards?

L. C. J. Holt. You may offer any thing then concerning your trial: if you can shew any reason to defer it, it will be proper to do it then.

L. Preston. Truly, my lord, I think one reason why my trial ought to be put off is, because I have privilege of excepting against so many of my jury; but if I have not time to look into the pannel, I shall lose that privilege.

L. C. J. Holt. We are not come to that yet, you are to plead now.

L. Preston. Then your lordships are pleased to over-rule my claim of peerage.

L. C. J. Holt. My lord, we are of opinion you ought to plead to this indictment.

Clerk of Arr. What says your lordship, are

are you guilty of this high treason, or not guilty?

L. Preston. Not guilty.

Clerk of Arr. Culprit, how wilt thou be tried?

L. Preston. By God and my country.

Cl. of Arr. God send you a good deliverance.—*John Ashton,* What sayest thou? Art thou guilty of the same high treason, or not guilty?

Mr. Ashton. My lord, I have only this to observe, besides what my lord Preston has offered: as to the business of the act of parliament, your lordships have been pleased to over-rule that plea; but, my lord, I am told, that if an indictment be faulty but even in a letter, we cannot be found guilty upon that indictment. Now, if we never have a copy of that indictment, how shall we know whether there be any such fault in it? Your lordships, who are our counsel, I suppose have never seen the indictment, and suppose there be twenty faults, we have not the advantage of them, by not having a copy; and how shall we come to have any advantage, if neither your lordships, who are our counsel, nor we ourselves, can see them. It may turn upon that.

L. C. J. Holt. But we will see it when you come upon your trial.

L. C. J. Pollexfen. That is a misinformation, for it may be such a letter as is not material, and it may be such as is material; as I suppose, your name being Ashton, the A should be left out, it would then be a question, what there would be to charge you.

Ashton. We know that it has been so in several instances.

L. C. J. Pollexfen. It may be such an omission that may make it no crime, but we must not presently conclude that it is so; but you have heard it read, and so have we; if there had been any such letter mistaken, it would have been taken notice of.

Ashton. As to the reading, there may in the reading of the indictment be many words not nicely observed. I suppose the indictment be right; I say it is possible it may, or it may not; but if your lordship never see it, who are our counsel by law, nor you will allow us counsel to look into it, if there be forty faults in it, we have no advantage of it.

L. C. J. Holt. We must not allow you counsel to pick holes in the indictment; that never was done. If you assign any reason, we may assign you counsel to debate any matter of law that may arise; but never was counsel allowed to find out faults in an indictment. When you come to your trial we shall try you upon your indictment, and if there be any thing considerable, you are to suppose we shall observe it for your advantage.

Ashton. My lord, we never had a copy of the pannel of our jury. I pray we may have it.

L. C. J. Holt. That you cannot have till you have pleaded.

L. C. Baron. Mr. Ashton, we have over-ruled my lord Preston about a copy of the in-

dictment: do you think we shall grant it you, when we have denied it him?

Ashton. My lord, I desire we may have a copy of the pannel.

L. C. J. Holt. You must plead first.

Cl. of Arr. Are you guilty of the high treason, or not guilty?—*Ashton.* Not guilty.

Cl. of Arr. How will you be tried?

Ashton. By God and my country.

Cl. of Arr. God send you a good deliverance.—*Edmund Elliot,* how say you, Are you guilty of the same high treason, or not guilty?

Elliot. Not guilty.

Cl. of Arr. How will you be tried?

Elliot. By God and my country.

Cl. of Arr. God send you a good deliverance.

L. Preston. My lord, I hope now it may be time to pray that my trial may be deferred.

L. C. J. Holt. Why would you have it deferred?

L. Preston. Because of the distance of my witnesses, and other things that would be necessary for me to have to prepare me for my defence; and besides, we have not had a copy of the pannel of our jury, and the reason of the law does order, that because it gives us liberty to except against them, and that we cannot know how to do, unless we inform ourselves of the men; and therefore I beg that I may have a copy of the pannel.

L. C. J. Holt. As for having a copy of the pannel, the court grants it. Let them have a copy of the pannel.

Cl. of Arr. Here is one ready for you.

Sol. Gen. There was direction given that there should be one ready.

Ashton. We have demanded it every day since we had notice of our trial.

L. C. Baron. You could not have it till there was an issue joined, and that could not be till you had pleaded.

L. C. J. Holt. And as to the putting off your trial, I know not to what time to put it off.

L. Preston. My lord, I am willing to have this matter tried as soon as possible, for it cannot but be uneasy to me to lie under those accusations; but some of my witnesses live in the country, at a remote distance. If it may be, next term, my lord, or the next sessions; for, if I have a copy of the pannel to-night, and am to be tried to-morrow morning, how can I provide for my defence? I cannot be prepared to except against the jury, and I am sure you will be tender, and consider the case of a man, whose life and fortune are concerned in this business.

L. C. J. Holt. To put it off till the next term, is to remove it out of this court; that we cannot do; and to put it off till after the term, will be too long a time.

L. C. J. Pollexfen. We cannot sit here after Monday, because the term begins on Tuesday.

L. Preston. My lord, this term is always a short term, and if I be tried to-morrow, it is trying me without giving me time for my defence.

Sol. Gen. My lord, there has been all the care taken that the nature of the thing was capable of, to prevent any complaint of this kind. Order was given, that my lord and these gentlemen should have notice as early as was possible. As soon as ever Mr. Attorney General had had an opportunity of looking into the evidence, notice was given them, that they should be tried, and that this was the day appointed for their trial. But there shall be no contending in a matter of this nature for a day. If it be desired, and the court please to put it off till to-morrow, we are contented; but there can be no reason to put it off for a longer time. As there is always a tenderness to be used, and I know will be, and as far as I am concerned, always shall be towards persons in these circumstances; so there is a regard to be had towards the government and the public. I am sure, if the accusation that is against these gentlemen is true, the government is highly concerned that this matter should come to a speedy examination, and that persons that enter into such designs be brought to judgment. The charge in the indictment is of such a nature as draws very great consequences along with it; it concerns no less than the life of the king and queen, the destruction of the fleet of the kingdom, and the invasion of the realm by the forces of a declared enemy. These are the things that the prisoners are charged with; and certainly there ought to be no delay in the searching into such matters as these. They have had a week's notice of trial already, and for many days of that week, at least they have had as many counsel to assist them as they desired, and all the solicitors that they had a mind to, have had free access to them; so that they have wanted no opportunity to prepare for their trial, that men in their circumstances could have. As to what has been said with relation to the jury, the law indulges them in the number of their peremptory challenges, without being put to shew cause, and the court hath granted them, at the very instant of their pleading, a copy of the pannel; and there is a reasonable time between this and to-morrow for their making such inquiry into the jury as is justifiable, and fit to be made: but if by time to look into the jury, it be meant, that there may be a time for tampering, that I am sure your tenderness of the government will not permit; you will take care as much that no such thing be done, as you will that they should not be surprized. If your lordships are pleased that the trial be put off till to-morrow, we will be ready to-morrow to attend it.

L. Preston. My lord, it is a very hard presumption that Mr. Solicitor makes of our asking a copy of the pannel, that it is with a design to tamper with the jury.

Sol. Gen. I did not say so, but I said till to-morrow was time enough to make a justifiable inquiry.

L. Preston. But if I be to be tried to-morrow, I am willing to be tried to-day, for I am as ready now as I shall be then.

L. C. J. Holt. It may be so, and as ready as you will be after the term; but I know not what your lordship means by expressing such resentment, that because you can't have what time allowed you would, therefore you will have none, but be tried now.

L. C. J. Pollexfen. You may have time enough to prepare yourself as to the jury, certainly, between this and to-morrow.

Serj. Thompson. My lord, we that are for the king, have given these gentlemen notice long enough to be prepared, if we should try them now; for that is the time we gave notice for: but because we would indulge them as far as we could, we are willing that they should have till to-morrow, and intending them that kindness, are not ready to try them to-day, and there can be no pretence for them to put off their trial any longer; for there can be no want of evidence as to the fact we can charge them with; for all the evidence that we shall bring against them was taken from themselves, or the greatest part of it.

L. C. J. Holt. Well, what time will you be ready then?

Serj. Thompson. To-morrow morning.

L. C. J. Holt. Then to-morrow at eight o'clock, you are to be tried.

L. C. J. Pollexfen. My lord Preston, do but consider you have had seven days' notice, and to-morrow makes eight.

L. C. J. Holt. You had notice for this day, this day seven-night.

Ashton. But we have had only three days' time to consult with our counsel, though we desired we might have our counsel come to us that day.

Sol. Gen. They were told, they must apply themselves to the king for that at the same time.

Ashton. We did so that night to my lord Sidney, then Sunday intervened, which was no day for business, and we could not have our order. On Monday we could not have it till night; so that it was Tuesday before we could get any body to us. My lord, it is a weighty concern, and all such hasty proceedings were thought very hard in the late times, and particularly the denying Mr. Cornish * time; and it is one of the reasons given in the king's declaration for his coming here into England, the hardships that the law laid upon men in their trials, which he came to prevent.

L. C. J. Pollexfen. The hardship that was upon Mr. Cornish was, that he was taken upon the Tuesday off from the Exchange, and tried before that day seven-night, and that was hard indeed: but besides, he was taken about his business off from the Exchange. I know not whether you were about your business, your lawful business, when you were taken, God of Heaven knows that. And pray consider, here is a matter of very great consequence on the one side, and on the other: for if men be

* See his Case in this Collection, vol. 11, p. 430.

plotting against the government, to give them time to carry on their plots will be mischievous on that side.

Ashton. My lord, till that be legally proved before your lordships, that is but a supposition.

L. C. J. Pollexfen. That will lie upon them to prove.

L. C. J. Holt. Mr. Ashton, we are to suppose you not guilty, till you are proved guilty.

Ashton. Then, my lord, the law says, we may except against so many persons; what is the end of the giving us a copy of the pannel? It is not to be presumed we can do it by their faces; for what can I say to the face of one I never saw? We must inquire concerning the men, and that is a work of time; for some of these gentlemen, I presume, live eight or ten miles out of town. Is it possible for me, before to-morrow morning eight o'clock, to send to 35 men to inquire after them?

L. C. J. Holt. No, nor is it intended you should.

L. C. J. Pollexfen. Nay, if you intend to send to the jurymen, we have no reason to give you time.

Ashton. I mean to inquire after the men, their lives, what religion they are of, what sort of men they are.

L. C. J. Holt. I suppose they are all Protestants of the church of England; but suppose they are all strangers to you, and yet good and lawful men of the county, and there be no difference between you and them, then they are fit to try you.

Ashton. It is true, my lord, but if I have liberty to except against 35, I ought to know something of them.

L. C. J. Pollexfen. Yes, and inform yourself as well as you can of them, but not to send to them, that is not to be permitted.

L. Preston. There is another point to inquire of them, and that is, whether they be freeholders or not.

L. C. J. Pollexfen. We have neither your lordship's affidavit, nor the oath of any other person, only an allegation.

L. C. J. Holt. My lord, you must expect your trial to-morrow morning; we cannot put it off, we are limited in time, the sessions can hold no longer than Monday, because of the term.

Ashton. Then will your lordship please to put it off till Monday?

L. C. J. Holt. No, we shall not have time to do it, it may be a long trial.

L. Preston. I protest to your lordships, I cannot be ready to-morrow to make that defence I desire and design to make, and which I may make, if your lordships give me a longer day.

Clerk of Arr. Here is a copy of the pannel for your lordship.

[It was delivered to the lord Preston, who gave it to his Solicitor.]

Ashton. My lord, we shall not have time to inquire into the jury.

L. C. J. Holt. Look you, we are not bound to do this, but you have it as soon as you have pleaded.

Ashton. My lord, it will take up five or six hours in writing of it out, and we must each have a copy.

Sol. Gen. They are all joined in one indictment, and have joint counsel, and joint solicitors, as we are informed.

Ashton. Then I hope you will allow us liberty till Monday for our trial.

L. C. J. Pollexfen. The court cannot allow longer time; the court here can sit no longer than Monday, and here must needs be a great deal of business to do of the ordinary business of the sessions, and when that day comes, perhaps it will not serve to go through with the trial, and then it must be adjourned till after the term, and in the meanwhile some are in hopes the king of France may come and determine the matter.

Ashton. Pray, my lord, let no suggestion against us preposses the opinion of the court before we be tried.

L. C. J. Pollexfen. I do not suggest any thing, but it is in the indictment alledged against you, and that you are to be tried upon, and if such things be there suggested, as we would give you all reasonable time for your defence, so we must take care that the government sustain no hurt by delays.

L. C. J. Holt. It is observed by the king's counsel, that they are things of very great consequence, and therefore they press for the trial.

L. C. J. Pollexfen. I cannot believe but that you will be as ready to-morrow, as you can be on Monday.

Ashton. The government cannot be prejudiced by putting it off till Monday, sure.

L. C. J. Pollexfen. The evidence that is to convict you, lies all on their side that are for the king, and I cannot imagine where your witnesses should be, unless they are in France; but you had reason to expect your trial, being apprehended in the manner as you were, and to provide for it.

L. C. J. Holt. The want of witnesses is only a surmise, and a pretence; for there is no oath of any witnesses that they want, or who they are: Indeed, if we had oath made that they wanted material witnesses, and to material points for their defence, that might be occasion for our further consideration; but shall we put off a trial upon a bare suggestion of the want of witnesses? Sure that was never done.

L. C. J. Pollexfen. Name any one particular man that is your witness, and the particular thing that he can prove; for if any of your witnesses do know any thing of this kind, it must be particulars, and not generals; if you will not name them, it is plain it is only a pretence you insist upon for delay.

Ashton. My lord, I insist upon the point of the jury, that we have not time to look after them.

L. C. J. Holt. Then that of the witnesses is waved.

L. Preston. 'Twas I that desired time for my witnesses.

L. C. J. Pollexfen. But you neither name them, nor bring us any oath about them, or of any thing they can prove for you.

L. C. J. Holt. Pray, don't spend the time of the court, nor your own time unnecessarily, you must prepare for your trial to-morrow.

Ashton. My lord, there is not a person in court, I believe, but will think it hard that we are so straightened in time.

L. C. J. Holt. The time you have had notice to prepare for your trial is sufficient.

Ashton. Mr. Cornish's case has been complained of as a very hard case in this very respect, and we would hope, the king that now is came to reform such abuses.

L. C. J. Holt. You have been already told, wherein the hardship of that case lay. I am sure yours is not like it; but take notice we will be sitting here punctually at eight.

L. Preston. Will your lordship please to let us have our counsel come to us, and our friends?

L. C. J. Holt. Yes, sure, you shall have all that is necessary for your defence that we can allow you, but unnecessary delays must be avoided.

[Then the Prisoners were taken away by the Keeper of Newgate to the gaol]

January 17, 1691.

This day, between the hours of eight and nine in the morning, the Court being sat, and those persons who were returned upon the jury were called over twice, and their appearances recorded; then the prisoners were brought to the bar.

Clerk of Arr. You the prisoners at the bar, these men that you shall hear called and personally appear, are to pass between our sovereign lord and lady, our king and queen, and you, upon trial of your several lives and deaths, if therefore you or any of you will challenge them, or any of them, your time is to challenge them as they come to the book to be sworn, and before they be sworn.

L. Preston. My lord, I beg your lordship will inform me, whether, if I have any thing to offer to the court, it is proper before the jury be impannelled, or after.

L. C. J. Holt. My lord, I don't know what your lordship has to offer; I think you have nothing to offer why the jury should not be sworn, for now your lordship has put yourself upon your trial, and are going to proceed in that trial, and the jury are going to be sworn. If you have any thing to offer, as to them, you may challenge them.

L. Preston. Truly, my lord, I have something to offer, but it is only what I did humbly offer yesterday, and that is, that my warning was so short, that I am not prepared for my trial. We had not above three or four days wherein we might consult about it, all the former time we have been kept close prisoners; we are now brought here to be tried, without

having time to look into the pannel of our jury. The pannel we had not till yesterday, and I humbly beg, that I may have some time to prepare for my defence.

L. C. J. Holt. My lord, this is that which you insisted upon yesterday. Your lordship said you wanted witnesses, and your lordship did not then mention what witnesses you wanted, nor was any oath made of any one that you wanted; and therefore the court over-ruled you, and wished you to prepare for your trial, and would not put it off. For if it should not be to-day, but should be put off till another time, it must be the putting of it off till another sessions; for we are straightened with it in point of time, for the session can last no longer than Monday, and you have had convenient notice.

L. Preston. Truly, my lord, I think it is hard, when my life and fortune, and all are concerned, that I should be hurried on to a trial, only because the court is straightened in point of time; and yet that is the only reason that I can perceive why such haste is made. I desire a little more time to prepare myself, and I think it very hard I should be denied. I must submit it to your lordships. If you will not allow me time, I cannot make my defence as I would.

L. C. J. Holt. My lord, as to the shortness of the time, that is no objection; you have had convenient notice; as much notice as the law requires, and as much time as, without particular cause shewn, hath here at any time been given in such a case. If indeed there had been any particular reason offered for putting off the trial, and you had made it appear by oath, the court possibly might have put off the trial; but because your lordship only suggested you wanted a witness, naming neither person, nor place, or matter, such witness should prove, they are of opinion no cause appears for such delay of your trial.

L. Preston. My lord, I assure you I am not prepared for my trial.

L. C. J. Holt. My lord, the court over-ruled this matter yesterday, it cannot be put off.

Sol. Gen. My lord, I would humbly offer your lordship one thing before the jury be called and sworn. By the law, these gentlemen at the bar have the privilege to challenge peremptorily to the number of thirty-five; which is so great a number, that if each of them severally take advantage of it (as they may do by law, and God forbid they should be denied any advantage the law gives them), it will be next to impossible to have a sufficient number of Jurors appear so as that we may proceed in the trial.

L. Preston. Truly, my lord, we don't hear what Mr. Solicitor says.

L. C. J. Holt. Do you not? Then I'll tell you what he says, when he has done: Go on, Mr. Solicitor.

Sol. Gen. My lord, all that I would know of them is, whether they intend to take the advantage that the law gives them, of single and

particular challenges; for then they must be tried severally; or whether they will be content that the same persons that are challenged by any one, shall stand challenged for all three. I leave it to them to take their own choice; let them do what they please in it.

L. C. J. Holt. My lord Preston, Mr. Solicitor tells you what the law is, that every one of you may challenge five and thirty without cause; and if the court should proceed to try you all together, and every one of you should challenge five and thirty, perhaps a sufficient number will be wanting to try you: the number challenged will then amount to 105 in all. If so be you agree in your challenges, that what one challenges shall be challenged by the other two, then the court will go on, and try you all together; otherwise they will be forced to sever you; therefore he desires to know whether you will join or sever in your challenges.

Sol. Gen. Take your own choice, gentlemen; and do what you think best.

L. Preston. My lord, the matter of challenging is so great an advantage to a man upon his life, that for my part I must insist upon that which the law gives me, to challenge as many for myself as I think fit, to the number that the law allows me.

L. C. J. Holt. My lord Preston says he will, as it is fit he should, take all advantages he can: what says Mr. Ashton to it?

Ashton. My lord, I expect the same advantage.

L. C. J. Holt. You must have it; it is not proposed to preclude you from any advantage that the law allows you: if you insist upon that advantage, you must have it, and then you must be tried severally.

Sol. Gen. Then, my lord, since they are pleased to declare they will sever in their challenges, we must desire to sever them in their trial, and to begin with the trial of my lord Preston.

Ashton. My lord, I desire the liberty to be by when my lord is tried.

L. C. J. Holt. No, no, that is not to be permitted.

Serj. Thompson. If you had joined in your challenges, then you had been tried all together.

L. C. J. Pollexfen. That advantage you lose by severing in your challenges; you lose the assistance of each other at your trial.

L. C. J. Holt. That is the consequence; but do as you please; set them by.

L. C. J. Pollexfen. It may be, they do not so well weigh the consequence, therefore call them again. Gentlemen, do you consider the consequence of your not joining in your challenges? You must not be by, if my lord Preston be tried by himself, but must withdraw, and thereby you will lose the advantage of helping one another.

Mr. Elliot. My lord, I desire to be tried alone.

Ashton. And so do I, my lord.

L. C. J. Holt. Then, captain Richardson, take them away.

VOL. XII.

Afterwards the Court was informed that Mr. Elliot desired to be tried with my lord Preston, and thereupon they were called again.

L. C. J. Holt. Gentlemen, do you desire to be tried alone, or with my lord Preston?

Elliot. My lord, if you please, I desire to be tried with my lord.

Sol. Gen. Does Mr. Ashton desire it too?

Ashton. No, my lord, I desire to be tried by myself.

Sol. Gen. Then we will try my lord Preston by himself.

L. C. J. Holt. Mr. Elliot, the king's counsel do not think fit to try you with my lord Preston, without Mr. Ashton; and unless you will all join, you must all be tried severally.

Elliot. I can only answer for myself.

Ashton. I am for being tried alone.

L. C. J. Holt. Then my lord Preston must be tried alone.

The other two were carried back to Newgate, and the lord Preston was bid by the Clerk to look to his challenges.

Clerk of Arr. Sir Godard Nelthrop, bart. challenged; Sir Thomas Cooke, knt. challenged; Sir William Hedges, knt. challenged; James Boddington, challenged; Thomas Johnson, challenged; Ralph Bucknal, challenged; Craven Peyton.

L. Preston. I do not except against him.

[Sworn.

Clerk of Arr. Then swear Mr. Peyton.

[Which was done.

Lucy Knightley, challenged; Scory Barker, challenged; Thomas Cuthbert, challenged; Alban Chaire, challenged; John Herbert, challenged; Hugh Squire.

L. Preston. I have nothing to say against him.

[Sworn.

Clerk of Arr. John Tally, challenged; George Ford, esq.

L. Preston. I do not challenge him. [Sworn.

Clerk of Arr. Henry Whitehot, challenged; John Crosse, not appeared; Thomas Smith, challenged; William Withers, challenged; Richard Cradock.

Mr. Cradock. My lord, I know not how I came to be summoned upon this jury; for I am no freeholder.

L. C. J. Holt. Then set him aside.

Clerk of Arr. John Cane, challenged; William Jacomb.

Mr. Jacomb. My lord, I am no freeholder.

L. C. J. Holt. How long have you not been a freeholder?

Mr. Jacomb. Near to four months.

L. C. J. Holt. Give him his oath. [Which was done.] Have you no freehold in the county of Middlesex in your own right, nor in the right of your wife?

Jacomb. No, my lord.

L. C. J. Holt. Then you must go on to the next.

Cl. of Arr. Joseph Dawson.

Mr. Dawson. My lord, I am an ancient man, and not fit to serve upon the jury.

2 X

L. C. J. Holt. Well, now you are here, for this time serve; we will excuse you hereafter.

Sol. Gen. My lord, we challenge him for the king.

L. Preston. My lord, I desire to know when any one is challenged for the king, whether they must not shew cause?

L. C. J. Holt. By and by, if there be not enough, they shall shew cause.

L. C. J. Pollexfen. You shall have all that the law allows you certainly, my lord.

Clerk of Arr. Thomas Austin; not appeared. Richard Paget.

L. Preston. Has this gentleman any freehold?

Mr. Paget. Yes, my lord, I have in the county of Middlesex.

L. Preston. I do not except against him.

Serj. Tremain. My lord, we challenge him for the king.

L. Preston. My lord, I humbly desire they may shew their cause.

L. C. J. Holt. My lord, cause is not to be shewn by the king's counsel till all the pannel be gone through; and then, if there be not twelve left to try, then they are bound to shew cause; that is the law.*

L. Preston. My lord, it is a thing of a very tender concern to me; I desire to know, if it be not usual that they should assign the cause, when they challenge any for the king: for if it be not according to law, it may be a prejudice to me; and I desire I may have counsel heard to that point.

L. C. J. Holt. My lord, shall we assign counsel to dispute matters not disputable? There is not any more clear case in all our law than that: if your lordship please, you shall have a book to read, that the king is not bound to shew cause till the pannel is gone through.

L. Preston. Then I do not insist upon it.

Clerk of Arr. Walter Bridal, challenged; Samuel Hodgkins, challenged; Thomas Elton.

L. Preston. I do not challenge him.

Serj. Tremain. Then we challenge him for the king.

Clerk of Arr. Arthur Bayly.

L. Preston. I have nothing to say against him. [Sworn.]

Clerk of Arr. John Milner, not appeared. Richard Page.

L. Preston. I do not except against him.

Serj. Thompson. Then we challenge him for the king.

Clerk of Arr. Richard Marsh.

Mr. Marsh. My lord, I desire to be excused; I am not fit to serve upon a jury.

L. C. J. Holt. Why?

Marsh. I am thick of hearing.

L. C. J. Holt. Methinks you hear me very well.

Marsh. Truly, my lord, I do not hear well.

L. C. J. Holt. Well, you may spare him, if there be enough.

L. Preston. My lord, I do not challenge him; I desire he may be sworn.

Serj. Tremain. We challenge him for the king.

Clerk of Arr. Thomas Harriot, challenged; Nath. Wall.

L. Preston. I do not except against him.

Sol. Gen. We challenge him for the king.

Clerk of Arr. Matthew Browne.

L. Preston. I do not challenge him.

Serj. Tremain. We challenge him for the king.

Clerk of Arr. Thomas Crosse, not appeared; Robert Breedon.

L. Preston. I have nothing to say against him. [Sworn.]

Clerk of Arr. James Partherick, challenged; John Baily, challenged; William Bourne, challenged; Henry Gerrard, challenged; Richard Cooper.

L. Preston. I say nothing to him.

Serj. Thompson. I challenge him for the king.

Clerk of Arr. John Bignal.

L. Preston. I do not challenge him. [Sworn.]

Clerk of Arr. James Ferne.

L. Preston. I do not challenge him. [Sworn.]

Clerk of Arr. Robert Longland, challenged; Edmund Salter, challenged; John Howlet, challenged; Richard Fitzgerald.

L. Preston. I do not except against him.

Serj. Tremain. We challenge him for the king.

Clerk of Arr. John Owting.

L. Preston. I do not except against him.

[Sworn.]

Clerk of Arr. Mark Lawne.

L. Preston. I do not challenge him. [Sworn.]

Clerk of Arr. Thomas Battle, not appeared; Francis Chapman, challenged; Gilbert Urwin, challenged; Richard Bealing, challenged; Edward Fuller.

L. Preston. I do not challenge him. [Sworn.]

Clerk of Arr. John Collins.

L. Preston. I do not challenge him. [Sworn.]

Clerk of Arr. Thomas Hollins.

L. Preston. I have nothing to say against him.

Serj. Tremain. We challenge him for the king.

Clerk of Arr. William Silcock.

L. Preston. I do not challenge him.

Serj. Tremain. We challenge him for the king.

Clerk of Arr. John Preston, challenged; Thomas Wright, challenged; Benjamin Boulton.

L. Preston. I do not challenge him. [Sworn.]

Then they were counted, and the twelve sworn were those whose names follow: Craven Peyton, Hugh Squire, George Ford, Arthur Bailey, Robert Breedon, John Bignal, James Ferne, John Owting, Mark Lawne, Edw. Fuller, John Collins, Benjamin Boulton.

Then Proclamation for Information and Evidence was made as usual.

* See in this Collection, Peter Cook's Case, A. D. 1696; and Spencer Cowper's Case, A. D. 1699.

Clerk of Arr. Sir Richard Grahme, hold up your hand——[which he did.]——Gentlemen, you that are sworn, look upon the prisoner, and hearken to his cause; he stands indicted by the name of sir Richard Grahme, late of the parish of St. Anne, within the liberty of Westminster, baronet, together with John Ashton, &c.——*prout* in the indictment *mutatis mutandis*——and against the form of the statute in that case made and provided. Upon this indictment he hath been arraigned, and thereunto hath pleaded not guilty, and for his trial hath put himself upon God and his country, which country you are; your charge is to inquire, whether he be guilty of this felony and high treason whereof he stands indicted, or not guilty. If you find that he is guilty, you are to inquire what goods or chattels, lands or tenements he had at the time of the felony and high treason committed, or at any time since. If you find him not guilty, you are to inquire whether he fled for it. If you find that he fled for it, you are to inquire of his goods and chattels, as if you had found him guilty. If you find him not guilty, nor that he did fly for it, you are to say so, and no more, and hear your evidence.

Mr. Knapp. May it please your lordship, and you gentlemen of the jury; This is an indictment of High Treason against my lord Preston, who is indicted by the name of sir Richard Grahme, baronet, and stands now prisoner before you at the bar; and the indictment sets forth, that the prisoner, together with one John Ashton and Edmund Elliot, as false traitors against our sovereign lord and lady, king William and queen Mary, not weighing the duty of their allegiance, the 29th of December, in the second year of their now majesties reign, at the parish of St. Clement Danes, in this county of Middlesex, did conspire, consult and imagine, to depose their majesties from the throne and government of these kingdoms, and to bring the king and queen to final death and destruction, and levy war within this kingdom, and procure an invasion to be made here; and that to bring their treasons to pass, they did prepare and compose, and cause to be prepared and composed divers treasonable letters, notes, memorandums, and instructions in writing, which were to inform the French king and his subjects, and other enemies of the king and queen, of the number, force and condition of their majesties ships, and how some of them were manned, and the names of several of the commanders of them, and how the castles and forts of Portsmouth, South-Sea, and Gosport, within this kingdom, were fortified, and how they might be seized and surprised by the king's enemies; as also to inform them of the time, places, ways and means how they might invade this kingdom, depose their majesties, and fight with their ships against their majesties ships, and cause and procure great forces to be raised against the king and queen, and send ships to plague the City of London, and war and rebel-

lion within the kingdom to procure; and that they did knowingly and secretly prepare and conceal two several bills of exchange for the payment of money to the king's enemies, and got these bills of exchange, letters, notes and memorandums, into their custody; and afterwards, the 30th of December, for the sum of one hundred pounds, by them, or some of them paid, they did hire a ship to carry them and the said bills of exchange, letters, notes, memorandums, and instructions, into parts beyond the seas, to and among their majesties enemies; and did also prepare a boat, which was to carry them to the ship, and accordingly they went into the boat, and went on board the ship with the bills of exchange and papers aforesaid; and being on board they set sail, and made away towards France with those bills of exchange and papers, with intention to disperse them, and to perfect their said treasons. And the indictment further sets forth, that there was and is a war between our king and queen and the French king, and the people of those parts, under his dominions, who are enemies of the king and queen. The prisoner, together with those other two named before, as false traitors, did adhere to the enemies of the king and queen; and to bring about this treason, they did procure such bills of exchange, letters, notes, memorandums and instructions, and did hire such ship and boat to carry them and those papers into France; and did go on board the said ship, and sailed away for France, with intention to aid and assist the king's enemies in counsel and intelligence, by those papers, and bills of exchange, as I before opened unto you; and this is laid to be against the duty of his allegiance, against the peace of their majesties, their crown and dignity, and against the form of the statute in that case made and provided. To this indictment, gentlemen, the prisoner pleaded, he is not guilty; and for his trial hath put himself upon his country, which you are. If we prove him guilty, it is your duty to find him so.

Sol. Gen. My lords and gentlemen of the jury; The indictment hath been opened to you at large, and I do not doubt but you have observed it. It consists of two parts, which are formed upon two several branches of the statute of the 25th of Edward 3. The one is for compassing and imagining the deposing and destruction of the king and queen; the other for aiding and assisting the king and queen's enemies.

Treason, gentlemen, consists in the imagination of the heart; but because that imagination of the heart can be discovered no other way but by some open act, therefore the law doth require, that some overt-act, manifesting that intention and imagination, be assigned and proved. I doubt not but you have observed that there are several overt-acts of both these kinds of treason, assigned in this indictment.

Gentlemen, the general design of the conspiracy (as will appear by the evidence) was

this : The king and queen were to be deposed, and this was to be effected by a French army, and a French fleet. It will be easily granted, that nothing more dreadful can enter into the imagination of an Englishman, than the destruction of our fleet, and the conquest of the kingdom by the arms of France. But yet it will be part of the evidence that we shall offer to you, that the prisoners, and others of the conspirators, seem to be of another mind ; for amongst the papers which were taken with the prisoners, you will see one, which is stiled, ' The Result of a Conference,' wherein they pretend to shew the possibility of restoring king James by the power of the French king, and yet to preserve the Protestant religion, and the laws and liberties of the kingdom. They themselves went no farther than to think it possible, and I believe it will be hard to persuade any other Englishman that it is possible, unless one instance could be given, that the French king ever employed his arms for setting up any body but himself, his own religion, and his own government. I never heard that he did pretend to form any part of his glories upon the virtue of moderation, or self-denial. And there can hardly be imagined a greater instance of self-denial, than for the French king, after he had destroyed the Dutch and English fleets, and subdued our forces at land, not to make use of his success, so as to add these three kingdoms to his conquests, and possess himself of the uncontested dominion of the sea for ever, but only to entitle him, at so great hazard and expence, to become a mediator between king James and the people of England, and, by his mediation, to establish the Protestant religion, and the liberties of the people : and yet, as absurd as this seems, you will find this to be the result of one of their conferences. I did never think it was the part of any who were of counsel for the king in cases of this nature, to endeavour to aggravate the crime of the prisoners, by going about to put false colours upon evidence, or to give it more than its due weight ; and therefore I shall be sure to forbear any thing of that nature. But I think it my duty to give some short account of the nature and course of the evidence to be produced to you ; which consisting of several sorts, it will be in some sort necessary to open it, that you may the more clearly apprehend it, and with more ease make your observations upon it.

Gentlemen, we shall produce in evidence, as well living witnesses, as papers and writings, which by a strange kind of Providence were taken upon my lord Preston, and the other two persons named in the indictment, when they were apprehended ; and therein this design that I have opened to you, will be made evident beyond all contradiction. As to the living witnesses, the course of the evidence will be this : one Nicholas Pratt is the owner of a smack, called the Thomas and Elizabeth, he does usually entrust his wife, Jane Pratt, with the hiring out of this smack ; William Paseley is

master of the vessel, and has of late been made a part-owner, to protect him from being pressed ; for it is a privilege that the owners of the vessels claim, not to be pressed. Some time since (the witnesses will tell you the precise time) this Jane Pratt was sent for to one Mr. Burdet's house in the city, where she met with Mr. Ashton, who desired to know, whether she could undertake to convey him and some others, with safety into France. She said, she did not doubt but she could do so ; and thereupon Mr. Ashton told her, that he and his friends were merchants and traders, and that they should make great advantage, to the value of a thousand pounds at least, if they could be there quickly. Their discourse went no farther at that time ; but Mrs. Pratt was appointed by Mr. Ashton to bring the master of the vessel along with her, for he had a mind to discourse himself with the master, and they were to meet at the Wonder-tavern in Ludgate-street ; and because there should be no mistake about the meeting, Mr. Ashton gave the woman a note of direction in writing, ready to be produced.

Accordingly, by the 29th of December, Mrs. Pratt and the master, came to the Wonder-tavern, where Mr. Ashton met with them, and there they treated of the price to be given for the hiring of this vessel to carry them to France ; and I think 150 guineas was the sum then insisted upon, but no bargain was made at this time ; but there was a new appointment to meet the next day, which was the 30th of December, at Mr. Burdet's house.

The next day, when she and the master came thither, they found there together Ashton and Elliot, the two other persons named in the indictment, and there this matter was treated of with great secrecy in Mrs. Burdet's bed-chamber. And they came to an agreement that 100*l.* should be the sum to be paid to Mrs. Pratt, for conveying into France Ashton and Elliot, and two other persons. So the contract was originally made for others besides Mr. Ashton and Elliot, and the money was actually deposited by Mr. Ashton and Elliot in Mrs. Burdet's hands, and a sixpence was broken ; one half of which was delivered to Mrs. Burdet to keep, the other half Mr. Ashton was to take along with him, and when the master had safely landed them in France, Mr. Ashton was to deliver his half of the sixpence to the master ; which being brought to Mrs. Burdet, either by him or Mrs. Pratt, upon the joining of the two pieces together, the master was entitled to receive the hundred pounds.

The next appointment was to meet at one Mr. Rigby's house in Covent-Garden, and that was to be on the one and thirtieth of December, when the voyage was to be begun : and the tide not serving to go through bridge till late, the appointment was to meet the later. When they, Mrs. Pratt and the master, came there, they found only Mr. Ashton and Mr. Elliot ; but before that time care was taken to provide a sculler at Surrey-stairs, to be ready to carry them on board the smack, and the waterman

was appointed to stay in a little ale-house thereabouts, to be ready when he should be called.

About ten o'clock at night four persons came down together, and went into this sculler with the master of the smack, and made what haste they could through bridge till they came to Pickle-Herring stairs, over-against the Tower, where the smack lay, and there went aboard the master and these four persons, my lord Preston, a servant of my lord Preston's, Mr. Ashton, and Mr. Elliot. The smack set sail immediately after they were on board, and their haste made them carry away the waterman's coat, which he had lent them whilst they were in the sculler, and that accident was the occasion of discovering who the waterman was that carried them from Surry-stairs. After they were on board the smack, they were possessed with great fear of being surprised. They knew the nature of the business they were about, and the danger they were in, if they should be discovered; and therefore when they were to pass by the George frigate, a man of war that lay in the River, they desired the master to hide them, which he did, by putting them under the quarter-hatches, a place where they could not stand or sit, but must lie along on the ballast. When they were passed by the George frigate, they quitted that place; but when they were near the Block-house at Graves, they grew apprehensive, and they desired to be hid a second time, which was accordingly done. And they continued to lie in that place till they were taken; and it was a happy thing they did so. The place was such, that they had not any possibility of throwing away their letters and papers, though they had made preparation for it in case of any accident, having tied them together, and fixed a piece of lead to them, that so if they saw themselves in danger of being taken, they might easily sink the packet: but being so close shut up in this place, that they could not execute their purpose, the papers were taken, and will be offered to you in evidence.

Gentlemen, captain Billop, by the order of a noble lord, now present, was directed to use his utmost diligence to seize some dangerous persons, of whose design of going beyond sea for some very ill ends, an intimation had been given. He got ready a pinnace well manned, and went in pursuit of them down the river; and both as he went and returned, he took care to search suspected vessels. When he came to this, he demanded of the master what number of men he had on board, pretending he came to press men: the master told him he had but three, and for those he had a protection. But the captain said he must be better satisfied, and must search the vessel; and in the search he found these four persons lying concealed in this secret place, under the quarter-hatches. As they were taken out one after another, one of the seamen observed Mr. Ashton to take up a bundle of papers from off the ballast, and put it in his bosom; and near the

place where the papers lay, he took up two seals, which after proved to be my lord Preston's seals when he was secretary. Captain Billop being informed of this by that seaman, he put his hand into Mr. Ashton's bosom, and took away from him the bundle of papers with the lead fixed to it. When they were put on board the captain's pinnace, they all pressed him much, that he would let them go on shore at Gravesend, pretending want of refreshment, they not having eaten, and the night having been cold; but he did not think that proper nor safe, but told them, they should go on board the George frigate, and refresh themselves there. When they came on board the George frigate, all the three gentlemen, and my lord Preston in particular, were very earnest with captain Billop to dispose of the bundle of papers, mixing extraordinary promises with great compliments. Not prevailing there, when they were returned to the pinnace, they renewed their solicitations, and one of them told him, it would be easy to remove all suspicion, by fixing the lead to some other papers of little signification, which were found in my lord Preston's pocket, which he might produce, and they would without difficulty pass for the papers that were taken. But the captain was too just to comply with this proposal. When they found he was not to be moved, you will find from the witnesses, that their promises were turned into threats, and they used another sort of language. When they were brought to Whitehall stairs, upon their landing they gave money to the master and the seamen, desiring them to say, they were hired to go for Flanders and not for France.

Gentlemen, these things which I have opened, carry a strong presumption of guilt, for Englishmen, especially one of that quality of my lord Preston, to go into the country of an enemy, without any manner of passport, and in such a manner as they could not expect but to be seized as spies, unless they were assured that their character was so well known there, that they should be looked upon, not as persons coming to get intelligence, but to give it; unless they were well assured of a good reception when they came there. But there is no occasion to leave any thing to conjecture in this case; what is contained in these papers makes the design of the voyage beyond dispute. I think, gentlemen, after you have heard the evidence, you will be very well satisfied, that my lord Preston, and the other two who stand indicted, were equally concerned in the papers; they were all alike earnest to preserve them from being seen; they all solicited for the disposing of them, and promised rewards if they might prevail.

Gentlemen, these papers are of various natures. One I mentioned before, is intitled, 'The Result of a Conference between several lords and gentlemen, both Tories and Whigs;' in which it was undertaken to prove the possibility and methods of restoring king James by a French power, without endangering the

Protestant religion, and the civil administration, according to the laws of this kingdom. Another contains heads for a Declaration to be prepared, in order to be published when the French have had success at sea, and are landing; and that is filled with such pretences as they thought most specious, and most likely to amuse and delude the people.

There is another sort of these papers which consists of Letters. These letters are directed in false names, and are not subscribed; and it is not to be imagined it should be otherwise. Yet, gentlemen, (though that is not the present business) the hands of the writers of these letters are very well known, and the subject-matter of them will easily reveal to you for whom they were intended; for though these letters are most of them written under divers cants, some under the colour of trade, some of them under the colour of a law-suit for the redeeming of a mortgage, others under the notion of a match, and a settlement to be made upon that match, yet the real business is so plain, that you need but hear them read, to see through the disguise.

Though they begin generally in the stile of merchants writing to one another, or the like, yet towards the end of the letters, you will observe expressions of duty and reverence (terms which do not usually pass in correspondence between persons of that sort) sufficient to shew that somewhat else was intended to be covered in what went before.

Gentlemen, it will appear to you, that some of the writers of these letters were of the number of those who were secured the last summer, when the French fleet was upon our coasts; and you will observe they complain, that by reason of that restraint the design was very much hindered, though they have endeavoured to redeem that loss of time since their discharge, and have carried on the business with more vigour than ever. In short, the design of these letters is to importune the setting out of the French fleet with all possible expedition: they say they must not suffer such a fit season to be spent unprofitably: that the best time is between this and the first of March to come to a good market; and if they come not before the tenth of March, all will be lost. In another of their letters they say, if the suit be well solicited and managed, it may come to a final hearing before the end of Easter term. They complain, that there are several indiscreet letters came from St. Germain, that turn to the prejudice of the design. Those letters are not enough disguised to deceive the people here, but speak too plainly what is to be expected from themselves, and from the French. You will take notice, that the letters, all which you will hear, are all bills with high characters of the bearer; for which reason they write in such general terms, because the bearer was entrusted with the whole. Some of the letters say, no particulars are or need be expressed, because he will inform them of every thing: others, that they could not write so much as he

could say; and that nothing was wanting, but to allow him a full and fit season to give an account of all the business; and that they entirely depend upon his account of them, and their condition.

And, Gentlemen, in one of the letters the bearer is stiled a lord; and to whom can that be applied unless to the prisoner at the bar? In another letter, when they speak of sending the copper and the linen (the goods pretended for carrying on the trade) it is added, and what the meaning of that is, they must refer to the bearer, who was able to give them a particular account. I have mentioned so much of the papers only that you might have a general notion of them; that so when you hear them read, you may more readily make your observations. I assure you, I have been as careful as I could, not to exceed the truth in opening any part of the evidence: but it is your part to see whether what I have opened be made out in proof. There is another paper that gives an account of their majesties fleet to be sent out this summer; and there is an observation at the end of it, that it was hoped it may be out in March. But you will find by other papers (and particularly by one of my lord's own hand-writing) that he was of another mind, that the fleet would not be out before June.

Gentlemen, the last sort of papers which I will mention to you, are some Memorandums and Notes written by my lord Preston, wherein he gives an account of several things of great moment; which, as his memory served him, are put together without connection or method, being only to remind him of them when he should have occasion to mention them. He therein gives an account of the number and strength of the English fleet; how they are manned, and who are the principal officers and commanders, and in what time they will be out. He likewise gives an account of the number and state of the Dutch fleet, and how that is to be divided and disposed of.

And with relation to the French fleet, there is a particular memorandum, that they must be out at farthest in April; that they must be out so as to separate the Dutch fleet and our's; that they must be sure to look in at Spithead as they come by, and secure what ships should be in that harbour from joining the rest.

There is also a hint given of those that were most likely to come in to them: and there is advice in what place their fleet should fight our's. They must not come so high as Beachy, where they fought the last year, but rather choose to fight in the chops of the channel. There is an account of Portsmouth, how fortified and garrisoned, that it has but 500 men; that Gosport had nothing but pallisadoes about it, and South-Sea-Castle very weak. There are memorandums of other heads proper for a declaration. There are the names of several persons, some of them with particular characters, and some without; and amongst the rest, there is the character given of the clergy of

the city of London, that they are the worst of all others.

Gentlemen, we shall proceed to the Evidence, and first call the living witnesses, and then read the papers; and when you have heard what the one can say, and what the other contain, we must leave it to your consideration, and submit all to the direction of the court.

Serj. *Tremain*. Pray swear Mrs. Pratt, Jane Pratt. [Who was sworn with seven or eight more.]

Serj. *Tremain*. Mrs. Pratt, pray will you tell us what you know concerning the hiring of a vessel, and whither it was to go, and by whom it was hired, and for what? Pray tell your whole knowledge in this matter.

Mrs. *Pratt*. Mr. Burdet, may it please your lordship, sent for me to his house, to hire a vessel to go for France, and asked me, if I could carry them secure. I told them I could let them have a smack that would carry them; and, if it please you, my lord, we met several times at his house, and at last there was Mr. Ashton there, and Mr. Ashton appointed to meet at the Dog-tavern upon Ludgate-Hill; I think they call it the Wonder-tavern.

L. C. J. *Holt*. Mistress, pray begin again, and speak out.

Mrs. *Pratt*. Mr. Burdet sent for me to hire my smack to go for France, and they asked me if I thought it would carry them secure. I told them yes, I thought it would; and I came several times about it to Mr. Burdet's house. The smack was not then come to the Tower, as it did afterwards; and then after they sent for Mr. Ashton, and he met me at Mr. Burdet's, and meeting at Mr. Burdet's, he gave me a note, to meet at the Dog-tavern upon Ludgate-Hill, and there Ashton met, but Mr. Burdet did not come.

Serj. *Tremain*. Who was with Ashton, when you met at the Dog-tavern?

Mrs. *Pratt*. None but a man of his, as Mr. Ashton said: there we sat about an hour and a half and did nothing. At length we went away, and appointed to meet at Mr. Burdet's house the next day at seven or eight o'clock, and there we met, and the bargain was made.

Serj. *Tremain*. What bargain?

Mrs. *Pratt*. I asked 150*l.* and they told me that was too much. Says Ashton, I will give you fourscore; says Mr. Burdet, pray encourage them, offer them 100*l.* Thereupon he did offer 100*l.* and we agreed for 100*l.*

Serj. *Tremain*. What day was that, can you remember?

Mrs. *Pratt*. We met on the Monday, and the Tuesday we agreed.

Serj. *Thompson*. What money was paid?

Mrs. *Pratt*. Ninety-three guineas and sixpence.

Serj. *Tremain*. Who was by when the bargain was made?

Mrs. *Pratt*. Mr. Elliot was along with them, Mrs. Burdet, and the master of the vessel, at the agreement.

Serj. *Tremain*. What is the master's name?

Mrs. *Pratt*. His name is Paseley; and there was sixpence broken, and Mr. Ashton took one of the sixpences, and Mr. Burdet ordered him to give his wife the other, and so he did; and when the money was paid, Mr. Ashton brought in a paper wrapped up, and said, we should see it told out, and he told it out there, and it was 93 guineas and the sixpence.

Serj. *Thompson*. Who did they tell you they were to carry into France?

Mrs. *Pratt*. Truly, my lord, they said three, that was all.

Serj. *Tremain*. What followed then? Did they give you any note where you were to come for them?

Mrs. *Pratt*. Mr. Ashton bid Mr. Elliot write a note where they should come; it was at Mr. Rigby's in Covent Garden, at the Seven Stars, and there we were to meet at eleven o'clock at night; and when we came there, Mr. Ashton was within, and went out and fetched in some company. Mr. Elliot came, and two other gentlemen that I never saw in my life before.

Serj. *Thompson*. Mistress, you speak of the breaking of a sixpence: what was to be done with that?

Mrs. *Pratt*. My master was to bring the half of the sixpence that Mr. Ashton had, to Mrs. Burdet, and then we were to have the 100*l.*

Serj. *Tremain*. Had Mrs. Burdet the other piece?

Mrs. *Pratt*. Yes, Mr. Ashton had one half, and she had the other.

Serj. *Thompson*. Was there any provision carried on board this smack?

Mrs. *Pratt*. Yes, there was a hamper and a trunk, which were fetched from Mr. Burdet's house; my man, John Fisher, carried the trunk, and a porter carried the hamper, and I took care to see it put in the vessel.

Serj. *Tremain*. When you came to Covent-Garden that night, what discourse had you? and what inquiries were there made, and by whom?

Mrs. *Pratt*. Mrs. Ashton comes in, and she said Mr. Ashton was her husband, and said there was some news from court, of having papers in a hat, and that they had chosen some lord or other: something it was, I remember, I can't tell what; but says one gentleman that stood by, and said, I was chosen the last year, that signifies nothing; and another said, I missed it; it is only a Christmas gambol, it signifies little.

Serj. *Tremain*. What further discourse had they?

Mrs. *Pratt*. Mrs. Ashton said she was afraid they should have no very good luck, for the cock crowed.

Serj. *Tremain*. Was there any discourse what advantage they should get by going, or you by carrying of them?

Mrs. *Pratt*. They said they would help us to the earning of 1,000*l.* before Lady day, if they went this time safe.

Serj. *Tremain*. Pray, mistress, recollect yourself; were they to go to Flanders, or where?

Mrs. *Pratt*. They were to go for France; they were not to go for Flanders.

Serj. *Tremain*. What time of night did you depart from Mr. Rigby's?

Mrs. *Pratt*. About eleven o'clock.

Serj. *Thompson*. How did they go away from Mr. Rigby's?

Mrs. *Pratt*. I did not go with them: Mrs. Ashton kept me, and gave me a leg of a goose, and some drink.

Serj. *Tremain*. Do you know any thing further?

Mrs. *Pratt*. No; I think I have told you all.

Serj. *Tremain*. Were you hired for France or Flanders; I ask you once again?

Mrs. *Pratt*. We were hired for France; any place there where we could touch.

Serj. *Tremain*. Was there any particular port mentioned?

L. C. J. *Holt*. If you have done with her, will my lord ask her any question?

L. *Preston*. My lord, I desire she may be asked, whether she ever saw me before?

Mrs. *Pratt*. No, never, my lord, but in the Tower.

L. C. J. *Pollexfen*. But she says, when they were at Rigby's, there came in two gentlemen with Mr. Elliot that night.

L. *Preston*. I desire to know of her whether I was one of them two?

Serj. *Thompson*. My lord, she does not say your lordship was one of them.

Mrs. *Pratt*. No, my lord, you were not one of them.

Serj. *Thompson*. Then set up *Paseley*. *Paseley*, what do you know about hiring of this smack to go for France? I think you are master of the smack called the Thomas and Elizabeth, are you not?—Mr. *Paseley*. Yes.

Serj. *Thompson*. Then, pray, give an account of the whole matter.

Paseley. The smack was hired of the woman, and not of me; and when I came up to London, she told me she had got a voyage over to France, if I was minded to go; I said, yes; and she appointed me to go along with her to this mistress what-do-you-call-um's house, this Mrs. Burdet; and when she came to this house, there was nobody within but Mr. Ashton; presently after came in Mr. Elliot. After they came in they told us the things were not ready yet, but they would be ready presently to carry on board. When these things were ready, John Fisher carried the trunk down, and the porter carried the hamper, and I went along with them to Billingsgate, and carried them on board; and when I carried them on board, I went to Billingsgate again, and so we went along to this Mr. Burdet's house; and so when we came up to Burdet's house, Ashton and Elliot were not there present; but we had been there but a little time ere they came in; and then they came and said to my owner and me, you shall

see the money told: it was all in gold but one sixpence; there was ninety-three guineas, and after the money was told, there was a sixpence, that was broken in half, and the guineas he rolled up in a paper, and gave them to Mrs. Burdet, and bid her lay them up; and he gave her one half of the sixpence, and kept the other half himself; and when I brought that other half that he had, or my owner, then she was to give the money to her or me.

Serj. *Tremain*. Pray what room of the house was this in at Mr. Burdet's?

Paseley. It was on the left hand going in.

Serj. *Tremain*. Was it a bed-chamber?

Paseley. Yes, it was.

Serj. *Tremain*. What time of night was it, pray?—*Paseley*. About eight o'clock.

Serj. *Tremain*. What discourse had you with them there, pray?

Paseley. They asked me, if I thought they might get well over? I told them yes, I believed they might.

Serj. *Thompson*. Did they tell you what part of France they were to go to?

Paseley. No, they named no place, but any part in France.

Serj. *Tremain*. Well, go on, tell us what they said further.

Paseley. So, Sir, they gave us direction to meet them at the Seven Stars in the Little Piazas, in Covent-Garden. When we came there it was eleven o'clock at night, and they were not in the house when we came in, except it were Mr. Ashton; but presently after Ashton and Elliot came in, and they sat down; and so in came two gentlemen more, but what they were, or who they were, I do not know; and they discoursed about papers shaking in a hat, and said they should have no good luck, for the cock crowed: and after this Elliot and Ashton came out of the house, and called me to go with them; and after we were gone out, Mr. Ashton leaves Elliot, and went away from him, and Elliot bid me go along with him; says he, Come, master, come along with me. He did not name any place whither they were to go; but it happened to be Surry-stairs, and going down, he calls in at the corner-house, which is an alehouse, for the waterman, and bid me go before to the water-side; and when we came thither the waterman steps into his boat, and I after him; and when I was in the boat I went into the stern, and by that time I was seated in the stern, there came down four men; but I never saw my lord and his man before they came into the wherry.

L. C. J. *Holt*. Who came in the wherry?

Paseley. There were all those four, Mr. Ashton, Mr. Elliot, my lord, and his man.

L. C. J. *Holt*. Where was this, do you say?

Paseley. At Surry-stairs, there the boat was.

Serj. *Tremain*. Was the prisoner at the bar one of them?

Paseley. Yes, he was.

L. C. J. *Holt*. Well, what did you do then?

Paseley. After we were seated in the boat

at Surry-stairs, we put off, and went down through bridge, and going through bridge we came on board, the vessel riding just against the Tower almost, and we went all on board; and when we came on board, my men were all asleep, and being asleep, I called them out of the cabin to haul up the anchor; and there being very little wind stirring, we could not get very far, but came just below the Half-way Tree, and then we stopped, and I ordered them to drop the anchor for fear of the vessels in the river; and the next morning about eight o'clock we weighed our anchor again, and went on till we came near the George man of war, and there they all of them hid.

Serj. Tremain. Who?

Paseley. All of them, my lord. There was Ashton, and Elliot, and my lord Preston, and his man.

Serj. Thompson. In what place did they hide?

Paseley. In the quarter-hatches, under the hatches where we lie.

Serj. Thompson. Did they desire you to hide them?

Paseley. Yes, they did.

Serj. Thompson. What did they say?

Paseley. They said, that if there should come any boat on board to press, I should shew them my protection; and so there came no boat then.

Serj. Tremain. How big is this place they hid in.

Paseley. It is in the quarter under, near the cabin-hatches.

Serj. Tremain. I ask you what kind of place it is?

Paseley. They cannot sit upright, nor stand upright, but they are fain to lie along, or lean upon their elbows.

Serj. Thompson. Well, go on, what happened afterwards?

Paseley. After that we were passed the man of war, they came up and sat in the cabin, where we used to eat our victuals; and when we came to Gravesend, over against the Block-house, they would go down again and hide, and did so till we passed the Block-house, and then they were for coming up again; and then I saw a boat coming about Tilbury, which made towards us, and thereupon they ducked down again, and the hatches were laid down upon them, and there they remained till they were taken.

Serj. Tremain. Where were they taken?

Paseley. They were taken between the north Block-house and the Little—

Serj. Tremain. But I mean in what part of the ship?

Paseley. They were taken in that little place where they were hid.

Serj. Tremain. Were the hatches shut down upon them?

Paseley. They were.

Serj. Tremain. How long had they been hid before they were taken?

Paseley. A quarter of an hour, or thereabouts.

VOL. XII.

Sir W. W. Did they desire to be hid there?

Paseley. Yes, they did; and they were hid there.

Serj. Thompson. Now tell us, after such time as they were taken, what they said, and what you observed?

Paseley. After they were taken they said nothing to me, my lord, nor none of them did speak to me after the boat had taken them.

Serj. Thompson. But what happened after they were taken?

Paseley. After they were taken, captain Billop ordered them to go into the boat, and us with them; and when we came to Whitehall-stairs, one of them said to me, Master, when you come upon your examination, say you were bound for Flanders, and not for France.

Serj. Thompson. Which was that that said so?

Paseley. It was Elliot, and he gave me half-a-crown to bear my expences that night, and said he would remember to take care of us afterwards.

Serj. Thompson. Did they give any money to the seamen?

Paseley. Yes, Ashton gave one of my men half-a-crown, and bid him say he was bound for Flanders, and not for France; and my lord's man gave my other man half-a-crown.

L. C. J. Holt. Was my lord Preston by when that money was given?

Paseley. My lord was upon the bridge, but not near me.

Serj. Thompson. If my lord have any questions to ask him, we have done with him for the present.

L. Preston. No, my lord, I have no questions to ask him.

L. C. J. Pollexfen. Was my lord Preston by when the direction was given you, to say you were to go to Flanders, and not to France?

Paseley. I say, he was upon the bridge, but was not near me.

Serj. Tremain. What discourse had you on board with any of them?

Paseley. Very little. They asked me if I thought they should go clear, and I told them, yes, I thought they might.

Serj. Tremain. Clear of what?

Paseley. Clear of the vessels searching. They examined me that night I was at the Seven Stars, if I knew the way of the Swing, on the back of the channel, to go clear of the town; I told them I did not know the way by the back of the sands by Margaret's, but the Swing would not keep them clear of the town.

Serj. Tremain. Was there a note written whither you were to come?

Paseley. Yes, there was a note written to meet them at the Seven Stars in the Little Piazzas.

L. C. J. Pollexfen. Whereabouts is Burdet's house?

Paseley. That is in Queen-street, in the city.

Serj. Tremain. You, Paseley, did the waterman that brought them on board, leave two coats behind him?

Paseley. Yes, the waterman did leave two coats, and I put them into my chest; and afterwards they broke open my chest, and took them out, and brought them to my Lord Chief Justice's.

Serj. Tremain. Then we will next produce that waterman. Set up Charles Betsworth.

Serj. Thompson. Come, will you give us an account who you carried on board a smack, and what happened?

Betsworth. I was going over the water from Surry-stairs about seven or eight o'clock, and a gentleman at the stairs called sculler, and asked me if I would carry him down the river. Said I, How far? Says he, To the Tower. Said I, It is against tide, and I can't carry you down so low. He said, he would stay till the tide turned. Said I, If I be out of my bed so long, I deserve to be well paid for it; if you will give me half-a-crown, I'll carry you down. Says he, I'll give it you. So then I came ashore, and he asked me what my name was. I told him, Charles Betsworth. Says he, Will you be sure to stay for us? Yes, said I, if you will be sure to come. If I be not at the stairs, I'll be at that alehouse there in the corner. So I staid, and carried a fare or two over the water; and then about eleven o'clock, as I was sitting in the house, a gentleman comes, and calls Charles—and so out I went to my boat, and took them in. There was one man, as I suppose, in the stern, and he that called me out followed me down; and by and bye came three more into my boat; one of them had a whitish cloak on, and the other a grey loose coat, and a red bag of the quantity of a peck; and so we put off, and rowed away; and just under the Temple-wall, which was all the words I heard from them that I can remember, says one gentleman, When do you hear the king goes away? and another made answer, and said, On Tuesday. So we rowed down through bridge; and when we were through bridge, they asked where the vessel lay; and he that was in the stern said, it was Southwark side, over-against the Tower, and bid me row over thither. And when we came just below Battle-bridge, that man said, That is she that rides a-head of us. I looked, and she had a pennant up. So they were put on board; and as soon as they were on board, she went off; and I rowed up to the bridge, and went through bridge, and came up as far as ——— and there I stayed, and took my sculls and my staff out of my boat; and when I took them out, I missed my clothes. Says I, God bless me, I have lost my clothes; but then I thought it was but a still tide, and therefore I would try if I could overtake them; for I thought they could not be got far, there being little or no wind; so I went down to the place where the vessel lay, and she was gone; and I inquired of several smacks that lay there, but could hear nothing; and I rowed as low as Limehouse-Reach; and about Blackwall and Limehouse-Reach I came up to a smack that I supposed was she, and cried out, Ho the

smack; and they answered me, So. I asked them, if I did not bring a fare aboard that smack awhile ago? Then they said, No. I told them, I had brought a fare aboard some smack that lay about Horsleydown and Pickle-Herring-stairs, and they had got two coats of mine, which I had forgotten; and it had a pennant up when they went on board, but this had none; so I rowed on further, till I came as far as Barkin-Sherf; and I thought, there being so little wind, that none could be gone beyond me, and therefore waited to see a smack with a pennant coming down, but I could not meet with it; and there I lay all night in my waistcoat, and the next day I came back to Greenwich; and as I came along, I went on board several vessels to inquire, because I took her for an attendant upon a man of war; but I could not hear of my clothes, till last Friday was seven-night two watermen came, and brought me the clothes I lost.

L. C. J. Then you have your clothes again?

Betsworth. Yes, I have.

Serj. Thompson. Pray look upon that gentleman there, my lord Preston, are you sure that he was one of them that was in your boat?

Betsworth. I can't tell that ever I saw him in my life before.

Serj. Tremain. You, *Paseley*, I ask you, was my lord Preston one of the gentlemen the waterman brought on board your smack?

Paseley. Yes, he was.

Serj. Tremain. Is that the waterman?

Paseley. Truly, my lord, I can't tell; but the waterman's coat was left on board.

Serj. Tremain. Then let me ask you another question, had you a pennant?

Paseley. Yes, I had when I came on board.

Serj. Tremain. Did you take in your pennant?—*Paseley.* Yes, I did afterwards.

Serj. Tremain. Why did you take it in?

Paseley. They asked me if there was a pennant, and I told them yes; and they bid me take it in.

Serj. Tremain. Who bid you take it in?

Paseley. Elliot did; so we took it down.

Serj. Thompson. Will my lord ask *Betsworth* any questions?

L. Preston. No, I have nothing to say to him.

Serj. Tremain. What did they carry on board with them, *Paseley*?

Paseley. They had nothing on board but the trunk and hamper that were brought down before from Burdet's house; and there was nothing brought in the boat but only a leather bag.

Serj. Tremain. Then set up *Fisher*. I think his name is John Fisher. You was one of the seamen that did belong to the smack, I think?

Fisher. Yes, I was.

Serj. Thompson. Pray then tell us, who were brought thither, and what happened upon it?

Fisher. About six hours before they came on board us, our master came himself on board,

and took me along with him ; but whither I was to go then I did not know. He carried me to a house in the city, and there gave me a small trunk to carry, and a hamper to a porter ; and we went away with them ; and he bid us at Billingsgate carry them on board, which we did.

L. C. J. Holt. When was the trunk and hamper brought on board ?

Fisher. About six or seven o'clock at night, on Wednesday, I think.

L. C. J. Holt. Well, and what followed ?

Fisher. My lord, and Mr. Ashton and Mr. Elliot, and my lord's man, and the master, came on board between eleven and twelve: there was no more came on board that I know of; but we were asleep when they came on board; and immediately our master ordered us to haul up the anchor. Now there was but little wind stirring; and by that time we were fallen down as low as the Half-way-Tree, it being still flood, we could go no farther: so there we were ordered to stop, and we lay by till morning: and about eight in the morning we weighed anchor again; and about nine, when we came to the George man of war, they hid; they desired to go down into the quarters, and we laid the hatches upon them.

Serj. Tremain. What kind of place is it that they hid in ?

Fisher. They could not stand upright, nor sit upright; but they must lie, or lean upon their elbows. So when we were got below the ship, they came up again into the cabin: and when we came at Gravesend near the Block-house, then they hid again till we were below the Block-house; and then we spied a boat coming, which made them to keep below; and there they continued till captain Billop took them.

Serj. Tremain. Were they all four there ?

Fisher. Yes, all four.

Serj. Tremain. After they were taken, what said they ?

Fisher. After such time as they were taken, and come up to Whitehall stairs, captain Ashton gave me a half-crown piece, and bid me say, they were going to Flanders, and not to France.

Serj. Tremain. But whither were you going ?

Fisher. Truly, I did not know where we were to go, till since we came on shore. I understood nothing till they hid; and then indeed I thought we were going to France.

Serj. Tremain. When did any body tell you, you were to go to France ?

Fisher. Since we came on shore.

Serj. Thompson. Will my lord ask him any questions ?—*L. Preston.* No.

Serj. Tremain. Then the next witness we call is one Amonds. Pray tell us what you know of this matter.

Amonds. May it please you, my lord, I know nothing concerning my master's business; but all that I know of this business is, that they came on board about twelve o'clock at night; and I was then asleep in the cabin,

and hearing some come on board, and my master call, I looked out, and there were three or four gentlemen, and my master; and he ordered us to set sail immediately, and make our way down as fast as we could. There was little or no wind: so that when we came down to the Half-way-Tree, we were forced to come to an anchor; and there we rid at anchor till it was broad day, when there was a brave gale to the westward; and by that time we got down to Long-Reach, about nine o'clock, we came to the George frigate, a man of war; and they understanding that, desired to hide these gentlemen.—*L. C. J. Holt.* What gentlemen ?

Amonds. My lord Preston, Mr. Ashton, and Mr. Elliot, and the other gentleman that was with them.

L. C. J. Pollexfen. Look upon my lord there, was he one ?

Amonds. Yes, that gentleman was one.

L. C. J. Holt. Well, go on.

Amonds. And so, Sir, after we were passed the frigate, they came up again, and did not design to go down any more till they see some other danger. When we came almost to Gravesend, they went down again: when we passed the Block-house I was at the helm; and they were resolving to go to dinner, and bid that man, my fellow, to reach them some victuals out of the hamper: and while he was reaching them some victuals, I see the pinnace coming towards us: said I, here is a pinnace coming aboard: says my lord, and they, we must go down again and hide; and so they did go down again; we apprehended that they were coming aboard to press us, and they had no mind to be seen. When the pinnace came near, they waved to us in this manner, as much as to bid us stay: so we laid the sail by, and staid for them till they came up; and when the captain came on board, says he, this is worth our coming on board; here are a couple of brisk seamen will do the king service; I must have them, I think. Says I, I hope not so, noble captain: says he, have you any thing to keep yourselves clear? Yes, says our master. I am sorry for that, says the captain. What is it? Says the master, I have a protection. Says the captain, let us see your protection: so the master pulls out his protection, and shews it. Well, says the captain, I must look a little further; and away he goes into the cabin, and takes up the hatches, where these gentlemen were. Says the captain, hye, hye, who is here? Turn out, says he: but I suppose they did not make so much haste as the captain expected; so he called some of his men on board; and when they came on board, my lord came out, and the rest of the gentlemen; and says my lord to the captain, I hope you will be so kind as not to take any thing from us. Says he, I will meddle with nothing but papers; it is papers I look for; and put his hands in both his pockets, and pulled out papers, and put them into his own pocket; but whether they were new or old, I cannot tell: and there was a watch likewise, but that he

gave my lord again, and said, I will meddle with nothing but papers. Then he searched Mr. Elliot; and Mr. Ashton was the last that came out; and there was one of the captain's watermen in the cabin with him; and says he, and please you, noble captain, that gentleman put something in his bosom. Says the captain, what did you put in your bosom, Sir? Nothing, says he, but my handkerchief.

L. C. J. Holt. Who said so?

Amonds. Mr. Ashton, and shews him his handkerchief; and afterwards the captain put his hand in Mr. Ashton's bosom, and pulled it out.

Serj. Thompson. What did he pull out?

Amonds. A roll of papers, with a piece of lead to it.

Serj. Thompson. Did you see the lead fixed to the papers?

Amonds. I did see it fixed to the packthread that tied the papers.

Serj. Tremain. What sort of place is it in which they were taken?

Amonds. They could not sit, nor stand upright in it.

Serj. Tremain. Had you any money given you?

Amonds. I had half-a-crown given me by my lord's man.

L. C. J. Holt. Who was it gave you the money?

Amonds. It was my lord's man; he that was on board the ship: he gave me half-a-crown in Whitehall, and said, I should say we were bound for Flanders, and not for France; but who the half-crown came from I cannot tell, my lord said nothing to me at all.

Serj. Tremain. Did you hear any discourse as they came down?

Amonds. No, I did not mind any thing of discourse; for I never came among them, unless it were at the hour of watching.

L. Preston. Pray did I say any thing to you at Whitehall?

L. C. J. Holt. My lord, your way is to propose your questions to the court, and they will ask them for you.

L. Preston. My lord, I desire to ask him, if I said any thing to him at Whitehall?

L. C. J. Holt. What say you, did my lord Preston say any thing to you at Whitehall?

Amonds. No, my lord, he never said any thing to me at all; it was his man that gave me the half-crown, and spoke to me.

L. C. J. Holt. Will your lordship ask him any other questions?

L. Preston. No, my lord.

L. C. J. Holt. Then call your next witness.

Serj. Tremain. Swear capt. Billop.

[Which was done.

Serj. Thompson. Come, captain Billop, pray will you tell my lord and the jury, where you did apprehend my lord Preston, and the circumstances of what happened at their taking.

Capt. Billop. Sir, I met with them at the upper end of the Hope.

Serj. Thompson. Pray give us an account, from the beginning to the end, what passed; how you came with the boat, and all that happened at that time.

Capt. Billop. About two o'clock, or between one and two, upon the last of December, my lord Danby came to me at one of the doors of the House of Lords, and told me his father would speak with me; and he carried me to my lord Lindsey's chamber, where immediately my lord president came, and told me there were some persons going for France about business of dangerous consequence, and he desired me to use some means to get them apprehended. I then proposed what I should have to enable me for the undertaking. My lord Danby said, there was such a boat that he would procure me, and my lord president gave me a letter to another person, who was to instruct me further about this matter. My lord Danby got the boat ready, and some men and arms in it, but I thought there were not arms enough; so I borrowed some arms of my lord Lucas, and about eleven o'clock, as near as I remember, we put off from Tower-wharf. It being very calm, I thought we should be swifter than any vessel, and should have the advantage of them all; and therefore run down as far as Gravesend, and I brought several vessels by the lee, in which time I pressed some Barkin men, two or three of them; and amongst them one that knew the vessels that lie in the river, having been on board several; and we did board divers, and took out some men, having a press-warrant; and he that I had taken of the Barkin men, after he had passed by several vessels, seeing this vessel sailing, told me that was the Thomas and Elizabeth: whereupon we made up to them, and waving towards them, they staid for us. When we came up, there was standing by the master two lusty sailors, and I told him I would take but one of them: he said he had a protection; I bid him shew it me. When I was come on board, and had looked upon his protection, I told him I must look a little further, and went down into the cabin, and took up the hatches, and there I found them all four lying together.

Serj. Thompson. What four?

Billop. My lord Preston. I did not know him then, nor till afterwards.

Serj. Tremain. Who else was there?

Billop. Mr. Elliot was there, and Mr. Ashton, who were both my former acquaintance; but my lord Preston I had forgotten, till one of them called him my lord, and I asked them what lord it was; and they said it was my lord Preston; so then I saluted my lord: so we rowed up.

Serj. Thompson. Pray, captain, tell us what happened in the vessel before you went out of it, after you found them there?

Billop. I handed my lord Preston up first; and after he came out of that little place, which he was forced to creep out of on his knees, I turned my lord about, and told him I must search him. He said, he hoped I would

not meddle with any thing ; I told him I would meddle with nothing but papers ; so I put my hand in his pocket, and took all the papers I could find, and put them in my own pocket ; and taking out a watch, I delivered it to my lord again. The next was Mr. Elliot, and I searched him, and found nothing at all upon him. After that Ashton came up, and one of my men told me, that gentleman had put something in his bosom : whereupon I gave him a sudden turn, his back being towards me, and asked him, what it was that he put in his bosom ? He told me nothing but his handkerchief, and plucked his handkerchief out ; with that I clapped my hand in, and got the packet, and took it out, with the lead fixed to it. I have the lead now in my pocket.

Serj. *Tremain*. Pray will you produce it, Sir ? [Which he did.]

Billop. This is the lead, several of my men saw it when it was fixed to the packet.

Serj. *Thompson*. What did you do with the packet ?

Billop. I put it immediately into my pocket, as soon as I had searched Mr. Ashton further, and then commanded these gentlemen all into my boat, and took all the people that belonged to the smack with me, after I had brought her to an anchor, and left two of my men on board of her, and there she rid till next day, when I sent two more of my men to bring her up ; and those two men I ordered to search all the parts of the vessel, and take what they could find ; and whatsoever they found, they should carry it to the Tower, to my lord Lucas ; which, I supposed, they did.

Serj. *Tremain*. Well, captain *Billop*, after such time as you had taken these papers, and brought these gentlemen into your boat, pray what discourse had you with them ? What said they to you concerning the papers ?

Billop. It was a pretty while before we talked of any thing : the beginning of our talk was, I remember, they desired to go ashore at Gravesend to refresh themselves, for it was cold, and they had not eaten any thing. It was my lord that desired it ; but I begged his pardon for that, and told him there was a man of war that lay at Long reach, where, as I believed, his lordship would be very well accommodated with any thing he wanted.

Serj. *Thompson*. Well, what said they afterwards ?

Billop. My lord Preston, after I had saluted him, upon knowing who he was, and Mr. Ashton and Mr. Elliot telling him I was of their acquaintance, he said he was glad he was fallen into the hands of a civil gentleman ; and they said they were glad they were fallen into the hands of an acquaintance. I told my lord, I hoped he should never find any thing otherwise than civil from me. My lord was very civil to me in complimenting, and assuring me he would acknowledge my favour and kindness to him.

Serj. *Thompson*. Aye, what did he say to you ?

Billop. My lord Preston told me, if ever it

lay in his power to do me service he would, and he did not doubt but he might ; and he used a great many words and expressions of kindness, and his readiness to do me service ; and amongst the rest, my lord said once to me, if I would dispose of the packet——

Serj. *Thompson*. Pray speak that again.

Billop. My lord Preston, in one of his discourses of his kindness in doing me service, had this expression, as near as I can remember, if I would dispose of the packet——

Serj. *Tremain*. What would he do for you, if you would dispose of the packet ?

Billop. He did not come to any particular instance of what he would do ; but he said he would serve me in any thing that lay in his power. Mr. Elliot and Mr. Ashton discoursed me several times about it : they courted me, and desired me to throw the packet overboard ; but I told them I would not do any thing of that kind : And Mr. Elliot said, that I might take the papers that I took out of my lord Preston's pocket, and tie the lead to them, and say that was the packet, and throw the other overboard. I told him, he took the king's counsel to be odd people, and very indiscreet, that could not find out such a thing as that. After this was over, we had a little interval, and there was a hamper in the boat's stern, and there was some bottles of wine taken out, and we drank several times ; and by and bye we had some discourse a little further about the same thing, and they pressed me to throw the packet away ; and one time particularly Mr. Ashton, I remember, said it would be a generous thing, *Billop*, if you would go along with us, I think you may do as well there as here.

Serj. *Tremain*. Whither would he have had you gone with them ?

Billop. He did not name any place, as I remember.

Serj. *Tremain*. What promises did they any of them make you ?

Billop. Mun Elliot whispered me several times, dear *Billop*, throw the packet overboard ; what good would it do you to injure so many honest gentlemen ? And Mr. Ashton and Mr. Elliot said, I had it now in my power to make myself as great and as rich as I would be.

Serj. *Tremain*. What did any of them say about the tide turning ?

Billop. Mun Elliot also said, it was impossible the current or the tide could run long this way or always this way.

Serj. *Thompson*. When you had refused this that they desired of you, notwithstanding their promises, pray tell us how they turned their discourse into threatenings.

Billop. Elliot told me when nothing would prevail, that every dog had his day ; but I answered, I hoped never to see it your day : but however, said I, pray desist from any such language, for I cannot bear it. After that they never asked me any thing about it.

Serj. *Thompson*. Now tell us what you did with these gentlemen and these papers afterwards.

Billop. I brought these gentlemen up to my lord Nottingham's office, and delivered the packet with the lead fixed to it, and stood by my lord Nottingham in the room till he had opened the papers, except while my lord Preston was examined; and when he opened the papers I stood by, that I might see him make them up again; and I think I took some of them in my hand, and he said I might read them; but I was uneasy, and not disposed at that time to read many of them; so I did not read them all.

Serj. Tremain. They were all by when Ashton said you would do generously to go along with them, were they not?

Billop. Yes, they were all in the boat.

Serj. Tremain. Did not one of them say to you, I know if captain Billop do serve us, he will do it generously?—*Billop.* Yes.

Serj. Tremain. Who was it?

Billop. It was Ashton.

L. Preston. I desire I may ask captain Billop a question.

L. C. J. Holt. Pray, my lord, put your question to the court, and they will ask it him.

L. Preston. I desire to know, my lord, where it was I said this to captain Billop, that he would dispose of the packet?

Billop. Just after I had first saluted your lordship, you said you were glad you were fallen into the hands of a civil gentleman.

L. Preston. Was it aboard the boat that I desired you to dispose of the packet?

Billop. Yes, and before we came on board the *George* frigate, when we drank about, upon the opening of the hamper; it was in the boat I am very sure, and before we came on board the *George*.

L. C. J. Holt. My lord Preston said to you, you say, he would do you all the kindness that lay in his power, if you would dispose of the packet; how would he have you dispose of it? What did he mean by it?

Billop. I do not remember he used any other word but that, dispose of the packet.

Serj. Thompson. But Ashton and Elliot did desire of you a great many times to throw it overboard?

L. Preston. I desire he may be asked this question. You said you carried these to my lord Nottingham; did you see them opened?

Billop. Yes, I did see them opened, and I saw my lord, as he opened them, lay them one by one, and read them over, and put them up again. And I looked upon several of them, while my lord Nottingham was reading others; and I stood by the fire, and I see my lord make them up, and he tied them with a piece of twine, and he clapped his seal upon them, and delivered them to me; and I went immediately and delivered them to my lord president.

L. Preston. Were you all the while by, while my lord Nottingham was reading the papers?

Billop. Yes, I was by when he opened them, and read them, and staid till he put them up again; and as they came from his hands, I presently carried them to my lord president.

L. Preston. Are you sure, or can you swear that these are the same papers which were taken on board the smack, that you carried from my lord Nottingham to my lord Danby?

Billop. So many of them as I looked into, I marked; and all that I marked I can swear to, and no more than them I cannot.

Serj. Thompson. I think you say that all those papers that you delivered to my lord Nottingham, you saw my lord Nottingham seal up, and all them you carried to my lord president?

Billop. Yes, I did so; all that my lord opened at that time were put together again, and his seal put to them.

L. C. J. Holt. But my lord asks you whether you can swear to the particular papers?

Billop. What I read I marked, and them I can swear to.

L. C. J. Holt. You say you carried all those papers to my lord Nottingham sealed, after he had opened them, to my lord president?

Billop. Yes, my lord, I did see my lord Nottingham open them; I see him make them up again, and when they were made up, he put his seal to them, and I carried them to my lord president.

Juryman. My lord, I desire captain Billop may be asked one question.

L. C. J. Holt. Ay, what is it you would ask him?

Juryman. I desire to know whether the papers were sealed when he took them and brought them to my lord Nottingham?

Billop. No, they were all tied up together with a tape, or a twine, I think with both, very fast together.

Juryman. There was no seal on them when he took them?

Billop. No; but there were several letters within the packet that were sealed.

L. C. J. Holt. Was not the outside of the packet sealed?

Billop. I do not remember the outside was sealed: there was a cover, but as near as I remember, they were folds of paper fast tied together.

Serj. Thompson. You delivered them as you took them to my lord Nottingham?

Billop. Yes, I never took them out of my pocket, after I had taken them from Mr. Ashton, till I came to my lord Nottingham's office, where I delivered them to him.

Serj. Thompson. Had you ever opened them, or seen them opened, before they came to the hands of my lord Nottingham?

Billop. No indeed.

Serj. Tremain. Then set up Johnson. [Which was done.] Pray tell us what you know of this matter.

Johnson. I was in my lord Dunblain's barge, and I went down with this captain Billop, and we were on board several vessels; and we light

upon a ketch, where we pressed some men. We thought it had been only some seamen that were to be pressed, we did not know of any thing else. When we had rowed down as far as you have heard, we rowed up again, and searched several little vessels and smacks that were in the river, when a fisherman that we had pressed said, that that was the vessel the captain inquired after: and then the captain bid us take some small arms, and I took a pistol and went on board. The captain read the protection, and then said, he must look further. When the captain looked into one of the cabins, and took up the hatches, I saw a great piece of roast beef, and my lord Preston by it, and a mince pie, and a fowl, and we took the beef out; but my lord's man said, he missed his knife, it lay upon the bench: and then came my lord up, and his man, and Mr. Elliot; and when Mr. Ashton (the man with the pock-holes) came up, he went down again, and pretended to look for his hat; but when he was down I see him cram something into his bosom, and I told the captain I had seen him put something into his bosom; and the captain took him hold by the buttons of his coat, and turned him about, and asked him what he had put into his bosom? He said nothing but his handkerchief; and pulling it out of his bosom, he shewed it to the captain; but the captain put his hand into Mr. Ashton's bosom, and pulled out the packet.

Serj. Thompson. You say you see him put something in his bosom, when he went down. Did you observe whence he took it?

Johnson. It was upon the gravel, and there were a couple of seals, which he afterwards took up, lying by; and I believe he took up the packet and forgot the seals.

Serj. Tremain. Pray let us see the seals.

Sol. Gen. Your lordship observes, the packet was not at first in Mr. Ashton's bosom.

L. C. J. Holt. No, it was not.

Sol. Gen. But he took it up from the place where the seals lay, and put it into his bosom. Pray in what place did this packet and these seals lie?

Johnson. Upon the ballast, for they had shoved away the board.

Sol. Gen. Was my lord Preston upon the ballast?

Johnson. Yes, my lord lay almost upon his back; he was the first that we saw, and he came out first. They were all four lying together there.

Sol. Gen. Who lay next my lord Preston?

Johnson. My lord's footman; Mr. Ashton lay next, and Mr. Elliot lay next.

Sol. Gen. Where were the seals then?

Johnson. My lord was the first that I see come up.

Sol. Gen. But I ask you where the seals were?

Johnson. The seals were down upon the ballast; whether they were my lord's or no, I cannot tell, or whose they were?

Serj. Tremain. Now that we will ask captain Billop. Are these the seals?

Billop. Yes, these are the seals this man gave me.

Johnson. I took them from off the ballast.

Serj. Thompson. Did my lord own these to be his seals?

Billop. I did not ask him, that I know of.

Serj. Thompson. Well, Johnson, go on, tell what you know further.

Johnson. After we came to Long-Reach, a gentleman that had a long perriwig, a black gentleman, Mr. Elliot I think they call him, had a pair of whiskers on when he was taken, and he took a pair of scissars and cut them both off; and he said, if ever he lived, he should remember me, having a tooth out, because I was so sharp upon him as to make him come out: and when we came on board the George frigate, in Long-Reach, my lord's man came to me, and said he would give me something to drink, if I would deliver him the seals.

L. C. J. Holt. Had you any discourse with my lord Preston himself about them?

Johnson. No, it was his footman that came to me, and said there was no body there but myself and him: I had them, and he would give me something to drink, if I would deliver them; but I delivered them to captain Billop.

L. Preston. My lord, may I ask a question or two of this witness?

L. C. J. Holt. Yes, my lord, if they have done with him. What say you, brother Thompson?

Serj. Thompson. We shall have done with him presently, my lord. Pray had you any money given you?

Johnson. No, but my lord gave the ship's company ten shillings to drink, and one piece was a brass half-crown.

Serj. Thompson. What did they say as they went along, as you remember?

Johnson. They had a great deal of discourse while we rowed. I was at the next oar to them, but I cannot tell what it was.

Serj. Thompson. Who did discourse?

Johnson. Ashton, Elliot, and the captain.

Serj. Thompson. Cannot you remember what they said, any of them?

Johnson. They did talk together several times; Elliot said he was a-cold, and came and rowed at the oar awhile; and Elliot swore an oath; says he, they row all as if they were rowing to prison; but truly I did not much mind their discourse, I minded my rowing. There were some victuals handed to us, which we did eat.

Serj. Tremain. Did Elliot seem to be angry? What did they say?

Johnson. Elliot wished that a thunderbolt might drop into the boat several times, and sink it; and when we went through bridge against tide, he wished that London-bridge might have fallen upon our heads.

L. Preston. Now I would ask him, if your lordship please, did you see Ashton take up the packet?

Johnson. Yes, I did, as it lay by the seals.

L. Preston. I perceive there seems to be

some stress laid upon my lying next to Mr. Ashton, and seals lying by the packet.

L. C. J. Holt. My lord, there has been no inference made from that yet by the king's counsel.

L. Preston. My lord, it is in vain to deny we were all together there.

Johnson. You were the first that I see, my lord.

L. Preston. We were all together; but there is no such thing to be gathered from thence as they would insinuate; but I suppose it would be deduced from hence, as if this packet, because it lay near these seals, should be my packet.

L. C. J. We have not yet heard, my lord, what use they will make of it.

L. Preston. But I desire to take notice of it, my lord; and I think it is a very hard presumption, because we were in one place, and the seals a little distance from the packet, therefore the packet must be presumed to be mine; I hope it shall not be presumed against me.

L. C. J. Holt. Since your lordship mentions it, I will take notice a little of it too: It is only a circumstantial evidence that is made use of against you; how far it will weigh, is to be left to the jury, when all the evidence is heard. The packet is found in the place where your lordship lay, and by it seals that belong to you; one is the seal of your office, as secretary of state, the other is your own proper coat of arms.

Juryman. With submission, my lord, I desire this witness may be asked this question, Whether he saw captain Billop take the packet out of Ashton's bosom?—*Johnson.* Yes, I did.

Juryman. And whether he saw Billop deliver the same packet to my lord Nottingham?

Johnson. No, I did not.

L. C. J. Holt. You gentlemen of the jury, consider this; he was not then by. Captain Billop tells you, that very packet which he took out of Ashton's bosom he carried to my lord Nottingham; and he tells you, my lord opened it in his presence, and he is sure he put all the papers together again, and set his own seal upon them, and then he took them from my lord Nottingham, and carried them to my lord president.

Johnson. As soon as I came to Whitehall, I was set centinel over those three men that came out of the smack, and was not admitted into the room.

Sol. Gen. Then we must desire my lord Nottingham may be sworn.

The Earl of Nottingham sworn.

Serj. Tremain. Where are the papers?

E. of Nottingham. Mr. Bridgman, I think you have the papers.

Sol. Gen. Pray, my lord, does your lordship remember captain Billop brought a bundle of papers to you, and what became of them? Will your lordship be pleased to give the court and the jury an account of it?

E. of Nott. My lord, all that I have to say

in this matter is, captain Billop brought to me a bundle of papers tied about with a packthread, to which was fixed a piece of lead, I believe the same piece that was now produced; at least it was one very like it. He brought also a signet, which I presume I can know again when I see it.

Serj. Thompson. Pray shew my lord the seals. [Which was done.]

E. of Nott. This is the signet I presume which he brought to me; I am sure he brought just such a one, if not the same. Those papers, when he delivered them to me, I opened in his presence, and when I had so done, I read them, and put them up together again, and sealed them with my own seal, and delivered them to him back again. What the papers are, and what he did with them, I suppose he will give you an account.

L. C. J. Holt. But your lordship says, the bundle of papers he delivered to you, you sealed up, and delivered to him again.

E. of Nott. All those papers that he brought to me I did seal up, and deliver back to him again.

Serj. Thompson. Pray, my lord, were they ever out of captain Billop's sight while your lordship had them?

E. of Nott. Not after they were opened. There was a little paper that was tied to the bundle, which fell loose upon the taking away the lead, and I opened that while he was by, and the bundle lay upon the table while I examined my lord Preston; and after my lord Preston was gone out, I called in captain Billop (who went out while I examined my lord), and I opened that great packet in his sight, and read the papers, and he read some of them; and all the papers in the great packet, and the little paper that was stuck in, I delivered, sealed up, to captain Billop.

Serj. Thompson. Pray, my lord, were the letters in the packet sealed?

E. of Nott. Yes, there were some of them sealed; and all that I received from him I delivered to him, and no more.

L. C. J. Holt. The gentlemen of the jury hear what my lord says.

E. of Nott. The very same, all, and no more, I say.

Serj. Thompson. Captain Billop, when you had them back from my lord of Nottingham, pray to whom did you deliver them?

Billop. To my lord president.

Serj. Tremain. Then we must desire my lord president would be pleased to be sworn.

The Marquis of Carmarthen, Lord President of the Council, was sworn.

Sol. Gen. We must desire the favour of your lordship to acquaint the court, when captain Billop came to your lordship, what he said, and what he brought with him.

L. President. Captain Billop did bring me a bundle of papers, and he told me he brought them from my lord of Nottingham, and they were sealed, wrapped up with a packthread,

and sealed with a seal, which I knew to be my lord's seal. He delivered them to me myself; and these papers I kept till I shewed them the king the next morning. And after I had shewed them the king, the king delivered them up back to me, having read some of them, and commanded they should be delivered to the cabinet-council. A cabinet-council was called, and accordingly there I did deliver them, paper by paper, and they were all marked by my lord Sidney, and some I think by my lord Marlborough; and so I delivered them altogether to my lord Sidney.

Sol. Gen. Then we desire my lord Sidney would please to be sworn.

The Lord Sidney sworn.

Serj. Thompson. Will your lordship please to acquaint the court and the jury, what papers were delivered to you, and by whom, and where those papers are?

L. Sidney. The papers that were delivered by my lord president, I have kept them, my lord, ever since. As soon as I had them, I read them, and marked them with the letter of my own name, the letter *H*. I have kept them ever since, only one morning I gave them to Mr. Bridgman to be copied out as soon as he could, and he delivered them me back again, and they have not been out of my custody since; only the night before last night they were sent to Mr. Solicitor to read, and brought immediately to me again.

Sol. Gen. To whom did your lordship deliver them to be copied?

L. Sidney. To Mr. Bridgman, I tell you.

Sol. Gen. So that they were never out of your lordship's hands till now, but only in Mr. Bridgman's hands?

L. Sidney. No, I kept them in my pocket ever since, only the night before last, when they were sent to you.

Sol. Gen. Did your lordship mark them before they were delivered to Mr. Bridgman to copy?

L. Sidney. Yes, I marked them when I received them.

L. Preston. My lord chief justice; your lordship does observe that captain Billop swears that they were never out of his possession till he delivered them to my lord Nottingham; my lord Nottingham says he never opened them, but left the packet upon the table while I was examining.

L. C. J. Holt. Pray, my lord, will you speak a little louder, that I may hear you?

L. Preston. My lord, I am saying, my lord Nottingham says, that while he was examining me, the packet lay upon the table unopened, and were never out of his eye till he sent them sealed by captain Billop, and so they come to my lord president, and they were kept by my lord president. My lord president says, my lord Churchill saw the papers, and they were in his possession.

L. C. J. Holt. My lord Preston, your lordship does mistake my lord president: he does

not say that they were in my lord Marlborough's hands; but he did communicate them at the cabinet-council, where my lord Marlborough was. He said, indeed, they were in the king's hands, but he was by all the while.

L. Preston. From that time they came out of my lord president's hands, I know not what may be put in, nor what taken out. These papers were not sealed, as I hear of, afterwards; and passing through so many hands, nobody knows what may be done to them. Truly, I think it very hard to swear, after all this, that these are the papers that were on board the smack.

L. C. J. Pollexfen. Will you please to ask any questions to satisfy yourself of any of these noble lords?

L. C. J. Holt. My lord, I'll put your lordship right.

L. Preston. With all my heart, my lord.

L. C. J. Holt. Your lordship hears what captain Billop says. He says, he brought them as he took them out of Ashton's bosom, to my lord Nottingham; my lord Nottingham opened them before him, and did deliver them to him again, having made them up: my lord Nottingham says, the same papers captain Billop delivered him, he delivered back again, all, and no more; and Billop says, he carried them to my lord president; my lord president shewed them to the king, and afterwards carried them to the cabinet-council; there the same papers were opened, and there they were marked, some by my lord Marlborough, and all by my lord Sidney.

L. Preston. Your lordship will please to observe this: my lord Nottingham was pleased to say, he opened no papers till I was called in and examined, and then captain Billop withdrew. Now, my lord, I don't know whether the captain can say that these were the very same papers that he took in the smack?

L. C. J. Holt. Captain Billop says, that he saw the papers opened by my lord Nottingham.

Billop. My lord Preston observes a thing that is very right, my lord, that after I had delivered the packet to my lord Nottingham, while my lord was examined, I withdrew; but my lord Nottingham has given your lordship an account, that he had not opened the packet then, but only the small letter or note that lay apart from the rest: but, my lord, the packet was in the same condition when I came in again, upon the table, as when I left it: my lord Nottingham, as I believe, had not opened that packet; for I found it just as I left it, upon the table.

L. C. J. Pollexfen. My lord Nottingham says, he delivered back to captain Billop all the papers that he received from him: they were never out of my lord Nottingham's presence; nor were they opened, as my lord says, but in Billop's presence, nor opened till after my lord's examination, except the little paper that was stuck in, and was loose upon taking away the lead.

Sol. Gen. Pray swear Mr. Bridgman. [Which was done.]

Serj. Thompson. Pray, when you received the bundle of papers from my lord Sidney, to whom were they carried, and to whom were they delivered?

Mr. Bridgman. My lord Sidney gave me these papers to have them copied, and I copied some of them with my own hand, the others I delivered to Mr. Poultney, and were copied in my presence in the office: they were never out of my sight; and as soon as ever they were copied, I carried them back to my lord Sidney, and delivered them to him myself.

L. Preston. Were any of them taken from you, Sir?

Mr. Bridgman. My lord, I say I copied some of them myself, the others were copied in my sight and presence, in the office.

Serj. Thompson. Pray, Sir, let me ask you one question? Were the same papers that were delivered to you by my lord Sidney, re-delivered back again and unaltered?

Mr. Bridgman. I am very sure I gave them all, the same back again, because I read them every one before they were copied.

Serj. Thompson. Did you observe my lord Sidney had marked them before you had them?

Mr. Bridgman. Yes, they were all marked before I had them.

L. Preston. My lord, I desire to ask Mr. Bridgman this question: pray, Sir, were they sealed up when you sent them to my lord Sidney?

Mr. Bridgman. No, they were not sealed, they were tied up; but about the seals I remember when I was in my lord Sidney's office—

L. C. J. Holt. The question is asked you, whether you carried them back sealed or no?

Mr. Bridgman. No, they were not sealed when they were delivered to me; but I can safely swear they were never out of my custody till I delivered them back again; for what I did not copy myself, were copied in my sight.

Serj. Thompson. But your lordship is pleased to observe, they were all marked by my lord Sidney before they were delivered unto him.

Sol. Gen. Then, my lord, we have done with our living witnesses for the present, and will read the papers.

Mr. Bridgman. One thing, my lord, I do remember; as soon as my lord Sidney received the papers back again, he looked over every one of them, and read them, and looked upon the marks.

L. Preston. If your lordship please, I would beg the favour to ask one question of my lord Sidney: pray, my lord, did your lordship number the papers?

L. Sidney. No, my lord, I did not number them.

L. Preston. But your lordship says upon your oath and honour, that those are the very marks upon them that your lordship set there?

Sol. Gen. We are indeed to produce them, and then we shall ask that particular question.

L. C. J. Holt. My lord Sidney will see them, and then he will answer your lordship's question.

L. C. J. Pollexfen. My lord Preston, my lord Nottingham is here a witness, and his occasions call him away, have you a mind to ask him any more questions?

L. Preston. No, my lord.

L. C. J. Pollexfen. What say you, gentlemen, have you any farther occasion for my lord Nottingham?

Sol. Gen. My lord, we must beg his lordship's patience, we do not know what occasion there may be: I desire this paper may be shewn to my lord Sidney. [Which was done.]

L. Sidney. That is my mark; that paper I know is one of the papers.

Serj. Tremain. Here are two of them; one of these is the copy of the other: both were taken in the same packet; the one is fairer written than the other.

Sol. Gen. Gentlemen, the paper we are now offering to you is that which I mentioned before; it is the result of a conference: there were two of them taken in this bundle; the one of them seems to be the first draught, the other is a copy more fairly written; but I think they are both in effect the same: however, they were both taken in the same packet, and you shall hear them read.

L. Preston. My lord, I desire that before it be read it may be shewn to captain Billop, to know whether it be the very paper that he took.

L. C. J. Holt. Ay, let captain Billop look upon it.

Billop. My lord, I do not remember that paper.

L. Preston. Your lordship observes that captain Billop cannot swear that this was one of the papers that he took.

Billop. All the papers that I looked into I marked, and all the papers that I marked I can swear to, and no others.

L. C. J. Pollexfen. Did you look into all the papers?

Billop. No, I did not.

L. C. J. Holt. But he swears, all that he brought to my lord Nottingham were sealed up by my lord Nottingham, and carried by him from my lord Nottingham to my lord president; and my lord president swears, he delivered them all to my lord Sidney; and my lord Sidney swears, this is one of those papers.

L. Preston. Certainly, my lord's swearing to a paper in this manner cannot be a good proof. My circumstances, my lord, are very hard; and your lordship, I have heard, ought to be of counsel for me in any point of law; and, my lord, I humbly desire to know, whether this can be a proof of a paper that he says was taken in a packet, and yet he cannot swear it?

L. C. J. Holt. My lord, he does not swear that this was one of the papers; but the ques-

tion is, Whether all these witnesses together do not prove it? You see how the evidence runs: all the papers taken were delivered to my lord Nottingham; all that were delivered to him were sent back by him sealed, and delivered to my lord president; my lord president brought them all to the cabinet-council, and delivered them to my lord Sidney; and this, my lord Sidney says, is one of those papers.

L. Preston. My lord, I have a very great honour for that noble lord; and I am sure, if he had not been upon his oath, he would have said that which was truth; but in this condition that I am in, I must crave leave to observe every thing that I can for myself; and I cannot but say, these papers are very oddly managed, and delivered up and down from one hand to another; I desire your lordship would please to observe, that these papers are here brought after a very odd manner.

Serj. Thompson. My lord Preston, you are not to sum up the evidence to the jury till we have done, nor to make your observations.

L. C. J. Holt. Brother, my lord opposes the reading of the paper, as not well proved.

L. Preston. I do so, my lord; and I hope your lordship will advise me, whether you do think it a sufficient evidence and proof of these papers. They are papers that have been copied out, and sent unsealed from hand to hand by some messengers from one to another; and which now appear to be unsealed, and some of which he that took them cannot swear to.

Juryman. My lord, we cannot hear one word that is said.

L. Preston. That is my misfortune; but I am urging to my lords the judges, whether this paper ought to be read; and I desire your lordship to advise me, whether it can be admitted as evidence, being thus oddly proved.

L. C. J. Holt. It is evidence, surely, my lord; but the question is, what credit the jury will give to this evidence? The jury are judges of that: but certainly it is evidence to have the paper read.

L. Preston. I doubt not but your lordship will do me justice, and I readily acquiesce in what your lordships do appoint.

L. C. J. Pollexfen. Pray, my lord, see how the evidence stands about this matter. First, it is sworn by Billop, that he took a bundle of papers; though it is true, the particulars he does not undertake to swear to. Well, what is next? Why, says he, all that was in that bundle I carried to my lord Nottingham, and I received from my lord Nottingham all that I carried to him. What says my lord Nottingham? He swears I delivered back again to captain Billop the same papers he delivered to me, and all, and no more, sealed up with my seal. When he has sealed it up, what does he do with it? Why, he carries it to my lord president. Is there any possibility of creeping out of this evidence? Well, he delivers them to my lord Sidney, and my lord Sidney says, this is one of those papers. Can there

be a plainer evidence than this? When he says, all he had he carried to my lord Nottingham; and my lord Nottingham swears, all he did receive he sent back, sealed by him, to my lord president; and my lord president swears, all he received, so sealed, he gave to my lord Sidney; and my lord Sidney swears, this is one of those papers.

L. Preston. But your lordship will please to observe, they were carried to the king, and they were in the hands of my lord Marlborough.

L. C. J. Holt. No, my lord, not out of the sight of my lord president. My lord president says, my lord Marlborough marked some of them, but they were delivered to my lord Sidney; and my lord Sidney does say, they are the same papers that he had from my lord president; and my lord president says, they are the same that were brought him by captain Billop from my lord Nottingham; and my lord Nottingham swears, he sealed them, the same papers, all, and no more than he received from captain Billop.

L. C. Baron. Your lordship should observe where the defect of the proof is, and then it may be supplied; for truly, put it all together, I cannot see how there could be a plainer proof given.

L. Preston. My lord, I desire to be heard as to this: my lord president was pleased to say, that some of them were delivered to the king.

L. C. J. Holt. No, they were shewn to the king; but my lord president was by all the while that the king did read them.

L. Preston. My lord, where a man's life lies at stake, and all that is dear to him, your lordship will certainly allow him to make what observations he can for himself.

L. C. J. Holt. Ay, in God's name, by all means: you shall have all the liberty you can desire.

Sol. Gen. My lord, we desire my lord president will be pleased to look upon those papers. [Which was done.]

L. President. This is one of the papers that I received from captain Billop, and which I shewed to the king, and which I brought to the cabinet-council; and this is another of the papers.

L. Preston. Pray, my lord, was your lordship by when his majesty read those letters?

L. President. Yes, my lord, I was.

L. Preston. My lord, I ask it for this end, to know whether they were out of your lordship's sight.

L. President. No, never; I was in the King's-cabinet; his majesty read some of them, and then put them up again, and gave them me; and I delivered them at the cabinet-council to my lord Sidney.

Sol. Gen. My lord, we desire this paper may be read.

L. C. J. Holt. Read it.

Clerk of the Peace reads.

"The Result of a Conference between some Lords and Gentlemen, both Tories and Whigs, in which it was undertaken to prove the possibility and method of restoring by a Fr. Power, without endangering the Protestant Religion, and Civil Administration, according to the laws of this kingdom.

"1. F. must either oblige or conquer us: if the last, he will find few helps here; but a bloodier resistance than ever the Romans, Saxons, or Normans found: it being incredible, how unanimous and obstinate that very thought renders the people; so that it may make us a heap of ruin, but no nation that can ever help or import any thing to F.

"2. If K. L. desires to oblige us, and make the work easy, that he may be at leisure to ply the empire or Italy, or to have an advantageous peace, he must take off the frightful character we have of him, and shew us he has no such design as returning our offended K. a conqueror upon us, but that he can, and will be our friend, and mediator; upon which terms he will find, that many lords and gentlemen will speedily shew themselves to his satisfaction; especially if he makes haste, and loses no approaching opportunity.

"3. If he incline to this sort of sense, he must over-rule the bigotry of St. G. and dispose their minds to think of those methods that are more likely to gain the nation; for there is one silly thing or other daily done there, that comes to our notice here, which prolongs what they so passionately desire. The methods thought upon are these:

"First, To prevent dangerous and foolish intelligence, by forbidding all in that court to write any news hither, and that K. J. only have his correspondence by whom to hear from, and speak to people here; since letters so often miscarry, and are filled with nothing but what we should not hear; and what we have are arguments for the most part against the K.'s restoration.

"Secondly, Since there is a great body of Protestants that never defected, and that many thousands are returning, and that they are the natural weight and power of these kingdoms, by having the heads, hands, and wealth of their side, to the odds and advantage of at least two hundred Protestants to one Catholic; the K. may think of nothing short of a Protestant administration, nor of nothing more for the Catholics than a legal liberty of conscience; for much e mutt is against all other notions, to which all private passions, and artificial frames in government, must yield or break. He may reign a Catholic in devotion, but he must reign a Protestant in government. Cromwell could not, yet on a broader bottom, with a victorious army, subsist or keep what he had got.

"Thirdly, He must give us a model of this at St. G. by preferring the Protestants that are with him above the Catholics; one being loyal upon less ties of interest; and to tell the na-

tion here what they are to hope for when he comes.

"Fourthly, He must give encouragement to lords and gentlemen here to come to him, at least seven or nine for a standing council; which will make us here think he is in some degree ours again, and that we have a relation to him, and some interest and share in him, by the men of quality of our own religion that are with him. This will incomparably facilitate the matter here; nor will they, when they come, come empty, and in their own names, which is still better, and will be more satisfactory there.

"Fifthly, To induce this, English Protestants should be encouraged by an edict of liberty from the K. of F. to have chapels at their own costs, in which to worship God after their respective ways; by which that K. will make us reflect upon his conduct towards his Hugonots, rather to flow from the hazard he thought himself in by their antimon. and resisting principles, than a desire of persecution.

"Lastly, All other requisite measures depending upon the acceptance this finds, an answer hereunto is impatiently desired by those that have discoursed the king's business to this maturity. So ended with an unanimous consent, both Tories and Whigs upon this occasion, that are in a way of closing in his interest."

L. Preston. I can very safely swear, my lord, that I never saw that paper in my life.

L. C. J. Holt. Come, go on with your evidence.

Sol. Gen. This is another paper of the same; but the words that are written short in that, are written at length in this.

[The Paper was read accordingly, and in the first blank there was written K. J. in the first paragraph (France) twice, in the third paragraph (St. Germain), in the fifth (Mathemat. for much e mutt); the rest are obvious, and need not be supplied.]

Sol. Gen. Pray shew my lord Sidney that paper. What says your lordship to it?

L. Sidney. This is one of the papers that I marked, and that I received from my lord president.

Sol. Gen. Pray, will my lord president be pleased to give himself the trouble to cast his eye upon that, and see if that be one of the papers?

L. President. My lord, I remember it well, it is one of the papers I received from captain Billop.

Serj. Tremain. This paper is what Mr. Solicitor mentioned as Heads of a Declaration.

L. Preston. My lord, I think it necessary to offer one thing to your lordships before it be read. I desire captain Billop should swear it to be one of his papers.

Sol. Gen. If your lordship pleases, you observe what has been done already. My lord president says, 'tis one of those papers that was

sent him by my lord Nottingham; and my lord Sidney hath sworn, it is one of the papers he had from my lord president.

L. Preston. I shall not give your lordship any more trouble than needs; I only offer it to your lordship; I waive it.

L. C. J. Holt. There is evidence enough to have the paper read.

Clerk of the Peace reads.

“That the king will return with the design of making an entire conquest of his people, is so ridiculous, as well as difficult, that it needs not be spoken to.

“That the king’s declaration be worded in general terms, that he will govern by the laws; that they shall be the rule of his actions; that he will endeavour to settle liberty of conscience by law; that whatsoever things were formerly done by him, which occasioned jealousies in the minds of his people, shall be left to the determination of a parliament, to be formally and regularly called as soon as is possible.

“That he has given sufficient evidence of his unwillingness to bring an army of strangers into this kingdom, by refusing the succours of the king of France offered him, and which were even ready to be embarked upon the first notice of the prince of Orange’s intended invasion.

“That he brings with him such an army only as is necessary for his own defence, and for the security of such of his loyal subjects as shall resort to him; that he will dismiss them as soon as he shall have rid the nation of those foreigners who have invaded it, and trampled upon the laws and liberties of his people.

“The king’s large exercising his dispensing power gave the great alarm to the people, and contributed most of all toward the general defection. Yet when that power came to be debated in the last convention, there appeared so many difficulties in the limiting of it (every body, even the present judges believing it necessary, that a dispensing power should be in the K.) that it was let fall, and that point remains as it was. And without mentioning that, or any other particular, the K. can be in no danger, by leaving all things which have been the occasion of jealousies, to the determination of parliament, where, besides the king’s professed friends and servants, there will not want others who will be glad of opportunity to ingratiate themselves.”

L. C. J. Pollexfen. Gentlemen of the jury, if you desire any thing to be read again, or any thing doubtful in it should be explained, tell us, and it shall be done.

Juryman. No, my lord, there is no occasion for that. I believe we apprehend these three papers that have been read.

L. Preston. My lord, it is necessary the gentlemen of the jury should be satisfied in this point.

L. C. J. Pollexfen. Ay, in any point; and if

they desire any scruple should be cleared, the court will do it for them.

Juryman. My lord, I desire to know whether captain Billop signed that paper or no?

L. C. J. Holt. No, he did not sign half of them; but unless it be proved, you ought to take it for granted that it is not signed by him.

L. Preston. My lord, I think it fit the jury should be satisfied in any scruple they raise.

L. C. J. Holt. They asked this question, Whether captain Billop did sign the paper? And I told them captain Billop did not say so; and therefore they are to take it for granted, that he did not.

Juryman. My lord, we take this last paper that was read, to be a paper that was delivered in the bundle taken from Mr. Ashton to my lord Nottingham, but not signed by captain Billop.

L. C. J. Pollexfen. Then you take it right.

Sol. Gen. Then the next paper that we produce is a List of the English Fleet that these gentlemen were carrying over into France.

L. Preston. That is printed, and to be found in every coffee-house.

Serj. Tremain. Shew that paper to captain Billop. [Which was done.] Can you take it upon your oath, captain, that that paper was in the packet that was taken in Mr. Ashton’s bosom?

Billop. That paper I have marked, and that paper I swear was in the packet I took away from Mr. Ashton on board the smack.

L. C. J. Holt. You are sure of it?

Billop. Yes, my lord.

L. C. J. Holt. Then read it.

Clerk of the Peace reads:

S H I P S.				
Rates.	Ships.	In Repair.	Not.	Building.
1	8	5	3	—
2	12	11	1	—
3	35	34	1	—
4	38	34	4	4
5	14	14	—	1
6	9	9	—	—
Fireships	25	25	—	8
Bomb-vessels	1	1	—	8
Ketches	1	1	—	—
143		134	9	21

“Brought in by admiral Russel to the House of Commons, December the 24th, 1690, the fleet whereof 60 Dutch.

“Memorandum, the new ships building, are expected will be ready to be launched by the end of March.”

Serj. Tremain. Pray shew this paper to captain Billop. [Which was done.] Pray, was that paper there among the others that were taken with these gentlemen?

Billop. Yes, it was.

Sol. Gen. Can you take it upon your oath, that that paper was in the packet that was in Mr. Ashton’s bosom?

Billop. Yes, my lord, I can.

Serj. Tremain. Pray shew him that paper too. [Which was done.]

Sol. Gen. And can you take upon you to say, that that was one of the papers in the packet?—Billop. Yes, it was.

Sol. Gen. My lord, we desire these may be read.

Clerk of the Peace reads: "New-year's eve," and it is directed, "For Mr. Redding."

"Sir; though the bearer of this will do us the justice to assure you, we are as full of duty, as unfeignedly and unconcernedly your's, as yourself could wish, yet this gentleman has undertaken.—You will forgive the presumption, if I do myself the honour to give you this fresh assurance in a few words, which I hope we do by our accounts. I shall omit no occasions, not neglecting the least, and making zealous wishes for the greatest, to shew ourselves such as we ought to be.

"Sir, I speak in the plural, because I write my elder brother's sentiments as well as my own, and the rest of the family, though lessened in number; yet if we are not mightily out in our accounts, we are growing in our interests, that is in your's. He that delivers this, will, I hope, entirely to your satisfaction, represent us, and me in particular, as with all the devotion imaginable, and unchangeable affection—Your's, God grant the happiest new-year."

Serj. Tremain. Read the other paper.

Clerk of the Peace. This is dated Dec. 31, 1690. "I must not let this bearer depart, madam, without assuring you——"

Sol. Gen. Hold, Sir, do not read that yet. Here, shew this paper to captain Billop [Which was done.] What say you, captain Billop, is that one of the papers taken from Mr. Ashton?

Billop. Yes, this is one that I read, and marked.

Sol. Gen. Then read it.

Clerk of the Peace reads: This is directed for Mrs. Redding.

"As it is impossible for me to express that extraordinary great satisfaction it gave me this time twelvemonth, when I had the honour to receive that mark of your favour and goodness under your own hand; so I have lived in some pain for an opportunity to write you my humblest acknowledgments and truest duty, from which, by the grace of God, I am no more capable of swerving, than of renouncing my hopes of heaven. I say this in behalf of my elder brother, and the rest of my nearest relations, as well as for myself. You may entirely depend upon us, not only for a constant adherence to so well chosen a principle, but for our utmost activity to promote your interests, which are inseparable from our own. I need come to no particulars by this bearer, who can, and will tell our whole heart; and I wish you could see them, how sincerely they are devoted to your service. God grant you a most

happy new-year, and many, very many, and very happy. Our young master hath all our best wishes; he daily gains more friends, and we get ground of his adversaries.

"New-year's Eve."

Sol. Gen. Now read your other paper of the 31st of December, 1690.

Clerk of the Peace reads. "December 31, 1690.

"I must not let this bearer depart, madam, without assuring you of my best respects. I have written by him to a friend of your's, but depend upon you to give my note credit.

"Though my creditors were no friends to the match which has been so long in treaty, for your relations have been very hard upon me this last summer, yet as soon as I could go safely abroad, I pursued the business, and do beg you to believe, that no endeavours of mine shall be wanting to perfect the settlement. You once put me in hopes of seeing you before this Christmas: your friends are sorry for the disappointment, pray lose no more time than is of absolute necessity. The bearer will tell you all things may be now easily settled, if the right way be taken. I long to hear how your young daughter does; she will find many friends, and I hope her portion will be well secured. God send you a happy new-year, and that I may be merry with you before it be far spent: and I beseech you keep me in the good opinion of your friend. I will always make good what I promised to you." [It is directed for Mrs. Charlton.]

Juryman. My lord, I desire to know who that is directed to.

Clerk of the Peace. It is directed to Mrs. Charlton.

Serj. Tremain. Shew captain Billop those two papers. [Which was done.] What say you to them, captain?

Billop. My mark is on the outside, but there is nothing written in that; I believe it is taken off from the inner paper.

L. Preston. Pray, my lord, is this any proof? I beseech you for God's sake to have regard for a man's life.

Sol. Gen. Pray shew the paper to my lord Sidney. [Which was done.]

L. Sidney. This was one of the papers I received from my lord president.

Sol. Gen. Then we must beg my lord president would be pleased to look on it. [Which was done.]

L. President. This was one of the papers brought me by captain Billop from my lord Nottingham, in that bundle.

L. Preston. Captain Billop does not know the paper, though his mark be to it.

L. C. J. Pollexfen. It is not indeed very material whether he does or no, because he did not read all; but I would observe, that it is sworn by lord Sidney, that this was delivered to him by my lord president, and sworn by my lord president that he had it in that bundle from captain Billop.

L. Preston. But, my lord, it does shew that there may be some alteration in the papers; because he having marked it, and marking none but what he read, he does not now own that to be the paper.

Sol. Gen. Pray, will your lordship be pleased to take it as it is? These are two papers; the one is only the cover, the other is the writing; captain Billop has only marked the cover, and not the writing; but my lord Sidney he has marked the paper itself, as delivered him by my lord president, and my lord president has given you an account, that it is one of the papers he received in that bundle from captain Billop.

L. Preston. I only mark, that there may be alterations made in these papers since they were taken.

Serj. Tremain. Pray read it.

Clerk of the Peace reads. "December 31, 1690. [It is directed to Mr. Jackson.]

"The bearer can give you so full an account of all things relating to your estate here, that I need not have troubled you at this time, but that I am desirous to lay hold of any opportunity I think safe to assure you of my service, and that I will never quit your interest, whatever the rest of the freeholders do. Your adversary has been so hard to his neighbours, that he has extremely disoblged all the old tenants, and a little matter would redeem the whole estate, if you would appear in Westminster-hall yourself; the best counsel have a good opinion of your title, and will zealously pursue your instructions. I only beg you would hasten them to us, and that you will appear yourself as soon as is possible: no time should be lost, and the cause may be brought to a final hearing before the end of Easter term, if it be well solicited. I heartily wish you a happy new year, and beg you to tell Mr. Charlton, that I long to know wherein I may serve him; and that I will follow his directions to the utmost, while I live. God keep you and your's."

L. Preston. Pray, Sir, to whom is that letter directed?

Clerk of the Peace. To Mr. Jackson, my lord.

Serj. Tremain. Pray shew that paper to my lord Sidney. [Which was done.]

L. Sidney. This is one of the papers I received from my lord president.

Then it was shewn to my lord president.

L. President. This is one of the same papers that I received in the bundle from captain Billop.

L. C. J. Holt. Read it.

Clerk of the Peace reads. December the 31st.

"The interruption of the former correspondence had a very ill effect many ways; but for that reason no opportunity ought now to be lost, and I hope this will prove a happy one.

"In trade, as well as in government, schemes must be laid; for there is no living from hand to mouth any more in commerce than in

politics: lay therefore your designs probably, and pursue them diligently, and with vigour; though it be a hazardous time, yet by venturing boldly, where venturing is advisable, it often returns great profit.

"There is nothing more to be said, but to give the bearer fit and full seasons to tell what he knows, both as to goods fit for our market, and when and where to be sent. The sea will quickly grow so troublesome, that unless you dispatch what you intend for us, you will lose a great opportunity of advantage. I hope the account he has to give of our negotiations here with the merchants that deal with us, especially those that have lately brought us their custom, will both encourage a larger trade, and excite the utmost diligence. I will say nothing of myself, it shall be enough that I can live in the good opinion of one I bear so great a reverence and affection for; but for this honest factor, I must own, I can hardly say enough. Truth and boldness are excellent qualities in a servant; and he has shewn both, as occasion has required him to shew them.

"I have but one word to add, and pray take it as the truest mark of unalterable respect: choose well, but have to do but with a few; for a multitude may give, but can never keep counsel.

"I shall with more impatience than becomes me, wait the result of this, and it will be a great mark of goodness to let us have it in the best and safest way.

"Once more; let not the season spend unprofitably, for a more likely one can hardly come than between this and the 1st of March. Interpret this, I pray, as no private interest of my own, or partial motion of any other person. It is my sense, my duty, and my friendship, which will not let me prevaricate, nor suffer those I love and honour to lose so happy and pressing an occasion of advantage. With the best wishes I close up this, and am, &c."

L. Preston. Pray, my lord, who is that paper directed to?

L. C. J. Pollexfen. This is directed to nobody at all.

Sol. Gen. Shew that paper to my lord Sidney. [Which was done.]

L. Sidney. This was one of the papers I had from my lord president.

Then it was shewn to my lord president.

L. President. This is one of the papers I had from captain Billop.

L. C. J. Holt. Read it.

Clerk of the Peace reads. This is dated December 31, but is not directed to any body at all.

"It is a presumption incident to those that are any where upon the spot, to think that they know better than those that are not, what is fittest to be done in any occurrence. This makes me say, that now is the time to make large advantages by trading, the sea being freer than two months past, or we can hope it

will be two months hence. This gentleman is well instructed in our markets, and what the goods are we want, and when and where they should be sent. It is most earnestly desired that this happy opportunity may not be lost, especially by the late undertakers, and I would not for much they should receive the least disgust. They are somewhat positive in their terms; but they also say, they will be good and constant customers; and I have more than once seen the mischief of over-rating, and overstaying the market. Opportunities are to be used, they cannot be given by men.

"The bearer needs nothing from me to recommend him, but he is deserving in our opinion here, and many will take their measures by the usage he finds there; and indeed the pressing posture of our trading affairs will not permit more experiments. If the several parcels arrive not, that have been promised, before the 10th of March at farthest (especially the copper and linen, of which the bearer will be more particular,) I am satisfied we shall lose this summer's profit. I am the more pressing, because I am well assured of what I write; and if ever I judged right, it is upon this occasion.

"I have said nothing of another gentleman that takes this opportunity to see those parts; but he has shewn a zeal and a sincerity in this affair equal to most. Jo. is not yet gone, by a misfortune, but he will follow with a good postscript in this affair. Of myself I will say nothing; I hope I need not, for nobody without vanity can be more sincerely and affectionately a friend and servant to the company than myself. I writ at large yesterday, and cannot write what the hand that gives this can say; and therefore will write no more, but that with the greatest respect, I am, &c."

Serj. *Tremain*. Pray shew this paper to my lord Sidney. [Which was done.]

L. *Sidney*. This is one of those papers I received from my lord president. [Then it was shewn to the lord president.]

L. *President*. This was one of the papers in the bundle I received from captain Billop.

L. C. J. *Holt*. Then read it.

Clerk of the Peace reads.

"Sir; I vow to you, I do not repine at having lost all for your sake, which I got by your favour; but it grieves me extremely that there is not that left which can secure me from being troublesome to you; for that is the thing in the world I would not be. I have told my lord my condition. What I desire of you he thinks very moderate, I hope you will. Pray, sir, be not backward in settling my little affair, for I have deserved your care. Your daughter and I must starve, if this government can make us. I hope our interests are not divided, that is, you have an equal tenderness at least for both. If you think fit to speak what I would have you to this bearer, he will give me a just account of it. You know he is obliged to be my friend, and I believe him grateful, since he

ventures so boldly for you. He brings with him some merry papers. Adieu, for I dare write no more; but pray send a messenger on purpose to me, that I may know exactly what you will do, and would have me do. If you send upon no other business, there will be no danger. Pray, sir, ask my lord, and he will tell you how I have been used, and upon what account. I believe you know it not.

"December 29.

"Your daughter is very well, very tall, and very pretty, as I am told."

L. C. J. *Pollexfen*. That is not directed to any body neither.

Serj. *Tremain*. Pray then shew these papers to my lord Sidney, and my lord president. [Which was done.] They were two.

L. C. J. *Pollexfen*. These papers my lord Sidney swears he received from my lord president, and my lord president swears he received them in the bundle from Billop.

Serj. *Thompson*. We pray they may be read.

Clerk of the Peace. December 31, 1690.

"Was my condition more desperate and uneasy than it is, I desire no greater satisfaction than to have done my duty to so good a master: I wish it was of more use to him; that is not my fault, nor of those I have acted with. Let it be looked into what has been foretold both as to England, Scotland, and Ireland, and see if most of it is not come to pass already, and the rest will follow, if not prevented. I wish it may also be considered what usage we have met with from men employed, and how they have left your business and friends; how they managed it you will know from all hands: things they could not do, nor durst not undertake, were better undone than not done by them. Men in this place, and in these times, must have some courage as well as sense to do any thing with people here. It is not my own ill usage makes me say this, but my concern for one I wish the best to in the world, and will give my proofs of this upon all occasions. I need not enlarge, since all our grievances are known to him that brings this. For my own part, I will stay here so long as I can be safe if with never so great trouble; but it would be some comfort to know men (when driven from hence) may be so; therefore the reports of people's usage are terrible as well as of the indiscretions of St. Germ. family: we feel the smart of it by ridiculous letters falling daily into the hands of the government. Their master and mistress are little obliged by it no more than we: if there is any thing, sir, you do particularly command me, or depend upon me for, let me know it. I cannot undertake much, nor furnish more. I have still helped every body, and paid to every thing I could; and if a twelvemonth ago my condition was what I then represented, you best know if it has been mended. Use, and considering that of others, makes me grow more contented; and if the prospect of misery to us all was any satisfaction, that is now plainly seen. Pray

God bless us all, by restoring every man his own, and you with long life. He that gives you this, hath furnished for your use to me, &c. 200*l.* which I desire may be repaid."

Sol. Gen. Read the other; it is in the same hand, and was inclosed in the former.

Clerk of the Peace reads. "I only beg, madam, no ill malicious report may take any place in your thoughts, in regard to me. I value your good opinion, and will endeavour to deserve it. I can do little towards, but wish most heartily for your happiness. I know no interest, madam, but my master's and your's, nor do I think they are to be made two: if you command me any thing, I will faithfully obey you, as I have ever done him. We all depend upon this bearer's accounts of us, and our condition. His faith and courage hath been enough experienced."

Serj. Tremain. Here is another paper, shew that to captain Billop. [Which was done.]

Billop. This paper I did mark, and this was one that was in the bundle.

L. C. J. Pollexfen. What is it, brother? pray open it.

Serj. Tremain. It is a draught of a cypher, with an alphabet of names, for carrying on the correspondence.

Serj. Thompson. Your lordship observes these matters were designed to be carried under several sorts of cants.

L. C. J. Holt. What says captain Billop to that paper?

Billop. That was one of the papers that I read at my lord Nottingham's, and marked it there.

L. C. J. Holt. Then read it.

Clerk of the Peace reads. "For Mrs. Anne Russell, to be left with Mrs. Richeson, at the Blue Boar, in Ryder-street, near St. James's.

A	— the king,
B	— the queen,
C	— the prince of Wales,
D	— the prince of Orange,
E	— Canon and the Scotch officer,
F	— the duke of Berwick,
G	— duke Tyrconnel,
H	— major-general Sarsfield,
I	— lieutenant-general Shelden,
L	— king of France,
M	— marshal Luxemburgh,
N	— marshal Belford,
O	— duke Powis,
P	— duchess Powis.
Amsterdam	— Brest,
Rotterdam	— Dieppe,
Hague	— Havre de Grace,
Brill	— Dunkirk,
Harlam	— Callis,
Italy	— England,
Germany	— Scotland,
Spain	— Ireland."

Serj. Tremain. Then the next papers we produce are the bills of exchange; pray shew

VOL. XII.

them to captain Billop. What say you, captain Billop, were those among the other papers?

Billop. Yes they were, I remember very well.

Serj. Tremain. My lord, they are in French, and therefore we must swear a gentleman that we have here, to interpret: call Mr. Humphry Levermere.

Levermere. Here I am. [He was sworn.]

"A Londres, le 29 Decembre.

"Monsieur;

"Le presante vous sera rendus par Monsieur Orbinet, qui est un de mes bons amis, & qui se fera cognoistre par quelque personnes de votre cognoissance. Vous m'obligerez tres sensiblement en de luy rendre service en tout ce que vous pourriez. Il pourra vous communiquer quelque affaire en commission; vous pouvez avoir confiance en luy de toutes les manieres, je vous prie doncque l'obliger en tout ce que vous pourriez. Je suis, Monsieur,

"Vostre tres humble & tres obeissant serviteur,
"A Mon. Mon. Jo. du "P. DU LIVIER."
Livier, Paris."

"A Londres le 29 Decembre, 8 Janvier, 1690.

"Monsieur;

"A un jour de veue il vous plaira payer par cette premiere d'eschange, a l'ordre de Mr. Michel Orbinet, trois mille trois cents trente trois livres valeur du dit sieur suivant l'avis de

"Vostre tres humble &

"tres obeissant serviteur,

"A Mon. Mon. Jo. du "P. DU LIVIER."
Livier, Paris."

"Londres le 29 Decembre, 8 Janvier, 1690.

"Pour liv. 3333.

"Monsieur;

"A un jour de veue plaira payer par cette premiere d'eschange, a l'ordre de Mr. Michel Orbinet, trois mille trois cents trente trois livres Tournois, valeur du dit sieur, & suis

"Vostre tres humble serviteur,

"A Mon. Mon. Anthoine Pel- J. BERIONDE."
"letyer, marchand a Paris."

"London, the 29th December.

"Sir;

"This present will be delivered you by Mr. Orbinet, who is one of my good friends, and who will make himself known by some person of your acquaintance. You will very sensibly oblige me in doing him service in all that you can. He will be able to communicate some affair in commission; you may have confidence in him about all points: I pray you then to oblige him in all that you can. I am, Sir,

"Your most humble, most obedient servant,

"To Mr. Joseph du "P. DU LIVIER."
"Livier, Paris."

"London, the 29 December, 8 January, 1690.

"Sir;

"At one day's sight be pleased to pay by this first of exchange to the order of Mr.

3 A

" Michael Orbinet, three thousand three hundred thirty-three livres, value of the said gent. according to the advice of

" Your most humble, and most obedient servant,

" To Mr. Joseph du P. DU LIVIER."
" Livier, Paris."

" London, 29 December, 8 January, 1690.
" For 3333 livres.

" Sir ;

" At one day's sight be pleased to pay by this my first exchange, to the order of Mr. Michael Orbinet, three thousand three hundred thirty-three livres Tournois, value of the said gent. And I am

" Your most humble servant,
" To Mr. Anthony Pelletier, J. BERIONDE,"
" merchant at Paris."

Serj. Tremain. Pray how much do they all come to ?

Levermere. They come to 500*l.* wanting but twelve-pence.

Serj. Tremain. My lord, we have shewn your lordship part of the papers that were taken in this paquet, but we have reserved three of the papers till the last place ; and these three papers, if we had no other, were sufficient to maintain this indictment, for they are written all with my lord Preston's own hand, wherein he gives an account how the French should invade us, how the forts may be taken, how London should be plagued, and what a sort of rascals the clergy of London are ; these are the contents of the papers, among other things. Pray shew them to captain Billop.

[Which was done.]

Billop. These were two papers that were in the paquet, and the other little one with them.

L. Preston. My lord, I would desire your lordship to observe one thing, to the best of my remembrance, captain Billop said, he only marked six of the papers.

L. C. J. Holt. How many has he sworn to ?

L. Preston. I believe he has proved more.

Billop. I never said so ; I marked a great many, though not all, but I did not say how many.

Serj. Tremain. Were these papers taken in the paquet ?

Billop. Yes, all three.

L. Preston. Just now he said but two.

Sol. Gen. Have you looked upon them all, Sir ?

Billop. Yes, I marked but two of them, but the other little paper was with them ; I read them myself, I remember it very well.

Serj. Thompson. Then we pray the clerk may read them.

Clerk of Peace reads. " Lady D. 2000*l.* And 200*l.* for shop debts."

Serj. Thompson. My lord, we would open this piece of evidence before we read it, that it may be understood, and we shall prove it to be my lord's hand afterwards. It consists of

many heads and particulars, without order or method, and seems to be no more than memorandums made by my lord Preston, to put him in mind what he was to enlarge upon when he came thither.

(Cl. of the Peace reads) Lady D. 2000*l.* and 200*l.* for shop debts.

Pension upon the

14—3 Deckt ships.—Britania, Ad.

Sovereign out and R—James.

33 3d Rates, make the 14 and 30 67.

Sundry hospitals and fire ships, some built on purpose proportionable.

Of third rates most manned: 14 not manned, great ones.

Rest in some proportion manned, not well manned, nor will be.

—Britannia not out till March, the rest, perhaps, in April.

—The French must be out in April, and in the Downs: Look in at Spithead to secure them.

The Dutch fleet cannot then join them.

Carter and others at Portsmouth, the likeliest men to come to him—Dutch Fleet 36 sail, 9 from 70 to 60 Guns ;—12 from 50 to 60—the rest betwixt 60 and 70—Get to it before the conjunction, otherways nothing. To fight in the Chops of the Channel ; not to come so high as Beachy—Portsmouth not manned above 500—One Gibson a Scotch Pedlar—Lands behind South Sea Castle.—Nothing but pallisado's about Gosport—Jenning's or Strickland, or Trevannion comes from St. Maloes in one night—most of the gentlemen have done him most mischief, the Tarpaulins his best friends, which dispirited—Danby desires to be in the Monk, keeps and fortifies Hull—King not to be on board the fleet—foolish letters from St. G's, taken every day in the D. post, and read in council—about June—England 67 great ships. Dutch 60, commanded 36 to us, 24 to act by themselves—Russel in the Britannia admiral—Killigrew the blue—the duke—Ashby the Royal James—Delaval the Sovereign, vice admiral blue—Carter the Vanguard—Those who shall not oppose or resist him to be pardoned—Not 21 days coming in, or shall not help the P. of O. 600,000*l.* to the States of Holland—No taxes in his time—and the K. of Fr. will require nothing—Chimney money to be taken away—not excepting outlaws—Scotland—let know whether the king will come or not soon, and acquaint him with the weakness of the Fr. Council—3 Dashes—or the like F. of—That some kind answer—Mr. East merchant of Bristol to be kept till called for William St.—from Amsterdam—Alexander—England—George—Scotland—Dorset, Cornwallis, Montague, Stamford, Shrewsbury, Macclefield, Monmouth, Devonshire—In Feb. the K. come to Scotland—endeavour to unite the Episc. and Presbyt. parties.—A less sum not interfere with the Fr. K. from highlanders—Campaigns—land at Leith—the Scotch army not a French one, 5000 good

Suedish foot, the reputation of a Protestant ally, two months to settle Scotland—a commission given to me from Mr. P.—for Fl. hinder Eng. and D. from joining—two vessels of 150*l*. price for Pensilvania, for 13 or 14 months—Ormond and Brandon disobliged about the guards.

To have 1200 seamen from Denmark and Holland—To save Campbell.—To be left at the Ship in Sheets Westminster—Flanders—R—Scotch ships in Newcastle harbour to plague London—The modest inquiry, the bishops answer—Not the chilling of them—But satisfying of friends.—To tell him that to protect friends, and as soon as foreigners are gone, he will dismiss his—The woman that was with the K. in Ireland, and sent commission to Stafford, and failing, not to be sent again; her friends live in Covent-Garden—Private letters not—Protesting lords against the usurper, three or five against the vacancy of the crown, Beauford, Newcastle, Thanet, Sawyer, Lutwich, Pemberton, Levints, Winnington, Montague, Shore—London clergy the worst, we have their wishes and they their oaths—K. betrayed by J. Porter, Seymour said it—Lord Nottingham says there will be a peace with Fr. and the K. left out—Bring foreigners to drive out foreigners, then dismiss them, leave all to free parliament.—No justices of peace, &c. actually in commission to be criminal.

L. C. J. *Holt*. Well, Gentlemen, have you any more evidence?

Serj. *Tremain*. My lord, we shall now prove these papers to be my lord Preston's own hand. Pray call Mr. Warr, Mr. Townesend, Sir Henry Johnson, and Mr. Bland.

Mr. Townesend sworn.

Serj. *Thompson*. Pray shew Mr. Townesend that paper. (Which was done) Pray, Sir, whose hand writing is that?

Mr. *Townesend*. I believe this to be my lord Preston's hand: I did not see him write it.

L. C. J. *Pollexfen*. Are you well acquainted with my lord Preston's hand?

Townesend. I have seen his lordship's hand sometimes.

L. C. J. *Pollexfen*. How often?

Townesend. Not very often, but I have seen it sometimes.

Serj. *Thompson*. Pray were you clerk in any office?

Townesend. Yes, I am in the office of the great wardrobe, where I have had occasion to see his lordship's hand sometimes, and I believe this to be his hand.

Serj. *Thompson*. Look upon the other two.

Townesend. I do believe these three papers are my lord Preston's hand.

Serj. *Tremain*. Those are the three papers that have been read last, which he says are my lord's hand.

Townesend. I do believe it, Sir.

Serj. *Tremain*. Pray look upon that paper, with the little one within it; do you know whose hand that is?

Townesend. I did not see it written, Sir.

Serj. *Tremain*. Do you believe you know who writ it by the hand?

Townesend. The latter part looks like my lord Preston's hand; but I cannot well say any thing to the other, it is written so small.

Serj. *Tremain*. Then swear Mr. Bland.

[Which was done.]

Serj. *Thompson*. Give him the papers. We ask you, Mr. Bland, whether you were well acquainted with my lord Preston's hand?

Bland. I have seen my lord's hand sometimes.

Serj. *Thompson*. Have you looked upon those papers, Sir?

Bland. Yes, I have.

Serj. *Thompson*. Pray whose hand are they?

Bland. I do believe these three papers are my lord Preston's hand-writing.

Serj. *Tremain*. Then we pray Mr. Warr may be sworn. [Which was done.]

Serj. *Thompson*. Do you know my lord Preston's hand?

Warr. I have seen my lord Preston write, but not very often; most commonly it was only his name: But I have seen him write some letters too.

Serj. *Tremain*. Pray, Sir, look upon those papers; whose hand are they, do you believe?

Warr. This paper seems to be like my lord Preston's hand; the other I cannot say much of, because that which I commonly saw him write was a large fair hand, and this is a little hand.

Serj. *Tremain*. Pray, Mr. Warr, look upon these seals; whose seals were they?

Warr. I believe the seals to be my lord Preston's: one of them was his seal when secretary of state.

Serj. *Thompson*. You were under him in that office, were you not?

Warr. Yes, my lord, I was.

Serj. *Tremain*. Now, my lord, we have done with our evidence, and shall rest here till we hear what my lord Preston says to it.

L. C. J. *Holt*. My lord Preston, you have heard what has been said concerning the matter you have been indicted for: What has your lordship to say for yourself?

L. C. J. *Pollexfen*. If the gentlemen of the jury desire to see the seals, they may have them. [The Seals were shewn to the Jury.]

Sol. Gen. My lord, we have done for the present.

L. C. J. *Holt*. Then if your lordship please, you may make your defence.

L. *Preston*. My lord, in the first place I must refer myself again to my Indictment, for I find, my lord, that the treasons of which I am accused, were none of them done in the county of Middlesex, and they are laid to be done within this county; I find nothing of that kind proved upon me to be done here; for any memorandums that they say may be in that hand, I hope the gentlemen of the jury will consider, that there was nothing followed upon any of these things, that may be found in those

papers: And in the next place, I desire to know, whether they are sufficiently proved to be mine; that is, whether similitude of hands is proof or not against me in such a case? I humbly offer these things to your lordship, and hope your lordship and the jury will consider of it.

L. C. J. Holt. Is this your lordship's defence, my lord?

L. Preston. My lord, I leave these things to the consideration of the court and the jury.

L. C. J. Holt. Your lordship insists upon it first, that there is no act of treason proved in the county of Middlesex; and then, whether similitude of hands be a good proof to prove these three papers, or any of them, to be your hand?

L. Preston. Nobody saying they see me write them, if I did write them.

L. C. J. Pollexfen. My lord, have you no witnesses, nor nothing that you would use of evidence for yourself?

L. C. J. Holt. Would your lordship disprove any thing of the matter that has been proved against you?

L. Preston. I must deny the whole fact; but I have no witnesses or evidence to offer you.

L. C. J. Holt. Then your lordship has no more to say?

L. Preston. I have not, I must leave it so with your lordship and the gentlemen of the jury.

Sol. Gen. We shall offer nothing farther, but leave it wholly to your lordship.

L. C. J. Holt. Your lordship has done then?

L. Preston. Your lordship observes none of the witnesses have declared that I was going into France, nor knew any thing of it. I did not hire the ship nor any thing of that kind; though I suppose if they had, it is not treason; but your lordship observes there is no such thing has been sworn.

L. C. J. Holt. My lord, as to the first matter that your lordship makes a question upon, whether there be any act of treason proved in Middlesex, that does depend upon the proof of your lordship's being concerned in the papers; for if your lordship had an intention in carrying these papers into France, which speaks a design to invade this realm, your lordship took boat in Middlesex at Surrey-Stairs, in prosecution of that intention, there is an overt-act in this county of Middlesex.

L. Preston. Your lordship, and the gentlemen of the jury observe, these papers were not found upon me.

L. C. J. Holt. No, my lord; but if it be proved that your lordship had an intention to carry these papers into France, and took boat in order to go with them into France, in the county of Middlesex, wherever your lordship acted in order to that design, that is treason, and there you are guilty. It is a treason complicated of several facts, done in several places.

L. Preston. My lord, I humbly desire to

know, whether they have been proved to be my papers?

L. C. J. Holt. That is a question that must be left to the jury upon the evidence.

L. Preston. Nobody swears they are mine, nor were they found upon me.

L. C. J. Holt. But what I am speaking to your lordship, is in answer to your question about the place; for you say, that there is nothing proved done in the county of Middlesex; now the question is, whether your lordship had a design to go to France with these papers? If you had, and if your lordship did go on ship-board in order to it, your taking boat in Middlesex in order to go on ship-board, is a fact done in the county of Middlesex.

L. Preston. It is not proved by any witnesses that I designed to go into France.

L. C. J. Holt. That is before the jury upon the evidence.

L. Preston. I hope your lordship, and the jury will observe it is not proved, and in the next place, there are no papers taken upon me; with humble submission, there is no proof of any such thing.

L. C. J. Holt. Well, how far your lordship was concerned in these papers, and whether you were going with them into France, is to be left, upon the evidence that hath been heard, to the consideration of the jury.

L. Preston. But I humbly submit that.

L. C. J. Holt. Have you any more to say?

L. Preston. As to what I offer, that nothing has been proved in Middlesex, I hope your lordship will take it to be a point of law, and then it ought to be argued; and I desire I may have counsel.

L. C. J. Holt. No, it is a matter of fact only; but if you please, the rest of my lords the judges may give you their opinion; for this is a question upon a supposition that your lordship was guilty of a design of going into France, and this with a purpose to depose the king, and alter the government; then the question is upon such a supposition that you were guilty of that design, whether you were guilty in Middlesex or no?

L. Preston. My lord, they have not proved that design.

L. C. J. Holt. We do not say it is taken for granted now, but it is a question upon a supposition. Now, my lord, I'll tell your lordship in short my opinion, the rest of the judges will tell you theirs: I am of opinion, if your lordship had such a design to go with these papers into France, and these papers were formed by you, or you were privy to the contents of them, then it is plainly proved, that you went into a boat in the county of Middlesex, in order to carry on this design, and that will make it a good indictment, and here is a plain overt-act of high-treason in Middlesex.

L. C. J. Pollexfen. I am of the same opinion; for your fact as to this particular point in law stands thus: You are indicted of high-treason in two points; one is, for conspiring to depose the king and queen, and alter the go-

vernment: and the other is, for aiding and assisting the French king, and his subjects, declared enemies, and in open war against the king and queen, and to invite the enemies of the kingdom to invade the kingdom. Now this design, and this help and assistance, are written in these papers; for they are instructions for the carrying on of this design. You, my lord, are the person that is charged to go with these papers to help on this design; you began your journey in the county of Middlesex, for according to the evidence, you took water at Surrey-Stairs, which is in the county of Middlesex, and every step you made in pursuance of this journey, is treason, where-ever it was: So then here is a sufficient proof of a fact in Middlesex.

L. Preston. That, my lord, is a point of law, and I humbly desire your lordship, that I may have counsel in this case. It is not proved by any body, that I said I would go into France; and in the next place, it is not proved that I had these papers about me; there has been no evidence given that I did take water with an intention to go with these papers into France.

L. C. J. Holt. The Jury are to be judges of that.

L. Preston. Then, my lord, what have I done? I have not done any thing within the danger of any statute upon which I am indicted; besides, my lord, what I have to offer further is this, I think I ought to have two credible witnesses to prove every fact, and I hope the gentlemen of the jury will consider, there is nothing but supposition as to me; and I hope I and my family shall not be ruined upon a supposition.

L. C. J. Holt. Has your lordship any more to say?

L. Preston. All the judges have not given their opinion.

L. C. J. Holt. The rest will give their opinions, if you desire it.

My Lord Chief Baron, what say you?

L. C. Baron. My lord Preston, I am called upon, it seems, to give my opinion in this case, but this I take it must be left to the jury, what credit they will give to the proof. Your lordship makes a question, as the proof stands, whether here be any thing done in this county? Here are instructions given to the French king how to invade England, and carry on the war against us. These instructions are contained in several papers, and these papers in a packet are carried to the smack, which smack was hired to go to France. You are found taking water at Surry-stairs, which is in the county of Middlesex, in order to go to the smack: you did go to the smack; the papers were taken in your company, and were seen lying by your seals; and the witnesses swear, they believe some of them to be your hand; you took care to desire to have them disposed of. Now how far the jury will believe this matter of fact, that is thus testified, is left to them; this seems to be the proof, and if the jury do believe it,

here is a plain evidence of an overt-act in the county of Middlesex.

L. Preston. I do insist upon it, with humble submission, it is not proved that these papers were taken upon me, or that I did take water at Surry-stairs to go to France.

L. C. Baron. That must be collected out of all the circumstances; the credit of which is left to the jury.

L. C. J. Holt. All the rest of my lords the judges are of the same opinion, as they tell me. Have you any more, my lord?

L. Preston. I must submit.

L. C. J. Holt. Gentlemen of the jury, my lord Preston stands indicted for high treason, in imagining and compassing the deposition, death, and destruction of the king and queen; and for that purpose, did write, or cause to be writ, several treasonable papers and letters, designed to go into France, and there to correspond with the French king and his subjects, who are enemies to the king and queen; and to carry with him those treasonable papers and letters, containing a project, and a formed design how this kingdom should be invaded by foreigners.

There is another treason in the indictment mentioned, and that is for adhering to, and abetting the king's enemies, there being open war declared between the king and queen, and the French king.

You have heard, gentlemen, a very long evidence, witnesses have been produced *viva voce*, and several papers have been read to you; some of the papers that have been produced, though they may seem mysterious and canting, yet they are not so very obscure and unintelligible, but if you consider them well, the meaning of them will appear. Others of them are more express, and do plainly demonstrate a design, that this king and queen should be deposed, and that there should be another prince set upon the throne, and restored to the government of this kingdom.

Gentlemen, there are two other persons mentioned in the indictment with my lord; and though my lord is only now upon his trial, yet the evidence which doth affect them, doth also concern my lord.

You have heard how there was an intention of some persons to go to France, and how Mr. Ashton, one of the two others that stands indicted with my lord, did treat with one Mrs. Pratt, one of the witnesses, to hire a vessel for that purpose, and it was by the means of one Mr. Burdett, that lives in the city; they had a meeting at Burdett's house, where they treated about the price that should be given for the hire of this ship to go to France, but at that time they did not agree. It was concluded, that the woman and Ashton and Burdett should meet at the Wonder Tavern; but Mr. Burdett not being there, nothing was concluded upon then.

And after that the woman, Mr. Burdett, and Ashton, and Elliot, met at Mrs. Burdett's; the woman insisted at first upon 150^l. After they

had been treating for some time, the bargain was made to go to France for 100*l*.

Then the next thing considered was, how this money should be paid; by agreement, 93 guineas, and 6*d*. which made up the 100*l*. was deposited in Mrs. Burdett's hand; a sixpence broken, one part Mrs. Burdett had: and the other part of the sixpence Mr. Ashton had: and when either Mrs. Pratt or the master of the vessel did bring back that part of the sixpence that Ashton had, to Mrs. Burdett, the money was to be paid.

After this agreement, they were appointed to go to the Seven Stars in Covent-Garden, to the house of one Mr. Rigby; and there the woman, Mrs. Pratt, and the master of the vessel, Ashton and Elliot met, and they were that night to go away, and to take water at some place near to go on ship-board; and having stayed there till it was about ten o'clock at night, then they went away into the Strand, and so into Surry-street, and took water at Surry-stairs.

But before that they came from Mr. Rigby's, some persons went to Surry-stairs to see for a boat, and met with that fellow that was here produced, who was a sculler, and did hire him to go through the bridge when the tide served, and to carry some gentlemen on ship-board; they agreed with him for half-a-crown, and he was to stay in an house near the stairs until they came.

And at the time appointed, Mr. Ashton and Mr. Elliot, and the master of the vessel, came to that place, and my lord Preston and his man with them, to take water. My lord Preston was not at Burdett's house at the hiring of the ship, nor at Mr. Rigby's; but it is proved by the master of the vessel, that he took water with the rest of them at Surry-stairs; that he went with them on ship-board, and was to go along with them.

Being on board the ship, they did appear to have some apprehensions of danger, and passing by a man of war, my lord Preston, his man, and the other two, went under the quarter-hatches, where they lay down to prevent themselves from being taken or discovered; and they hid another time when they came near Gravesend, and coming up they seeing a boat coming towards them, they hid themselves again. Captain Billop, who it seems, was sent to apprehend them, pretended he was to press seamen, and when he came on board the smack, he said he would press the mariners, who answered they had a protection: but he being upon his search, pulled up the boards of the quarter-hatches, and there was my lord Preston and the other persons lying down: it was not a place that was very proper for gentlemen, or, indeed, for any passengers, to repose themselves in; it was an uneasy place, nobody could sit or stand upright in it; nay, there was no convenient place for lying down, but they must lean upon their elbows, which posture those gentlemen were in; so that their purpose was plainly to conceal themselves, and their concealing them-

selves must be because of some design they were about, which they would not have discovered.

They being taken out from under the hatches, one of the witnesses tells you, he saw a packet lying there, and Ashton, pretending to fetch his hat, went down, took it up, and put the packet into his bosom; and the witness informing captain Billop thereof, he caused Ashton's coat to be searched, and from thence took the packet, and a piece of lead tied to it, which was produced here in court.

When they were bringing away in custody, they seemed all of them to be very much concerned about this packet; some of them, that is, Ashton and Elliot, would have had it thrown with the lead over-board. My lord Preston did not say so much, but complimented captain Billop in this manner, He was glad he was fallen into the hands of a civil gentleman, a person of worth, and he should always acknowledge his kindness, and would do him all the service he could, if he would dispose of the packet.

My lord Preston was searched at that time, and letters of no great moment taken about him. Ashton and Elliot would have had captain Billop to take those letters which were taken in my lord Preston's pocket, and tie the lead to them, and have thrown the packet over-board, and to report to the king and council, That those letters were the packet that was taken with the lead; and so have persuaded him to be false to the trust that was reposed in him.

And Ashton and Elliot used many expressions to induce him to that compliance; they told him the government was unstable, and every dog had his day, and the tide would turn; and that he would deserve very well if he would change sides, and go with them where they were going; and that he had opportunity to get any preferment he would have.

L. Preston. My lord, I hope your lordship observes that I said none of all this.

L. C. J. Holt. No, my lord, I do not say you did; my lord Preston did not say any thing of all this, but only about disposing of the packet; that his lordship spoke of to captain Billop, and complimented him, and promised him kindness if he would dispose of the packet.

But, gentlemen, as there was a packet taken, so there were two seals taken at the same time, and in the same place, which have been produced and shewn to you; they lay both of them upon the ballast under the quarter-hatches, near the packet: the one of them is the seal of my lord Preston's own coat of arms, the other seal belongs to the secretaries office, which office my lord once held in the late reign.

L. Preston. I beg your lordship would be pleased to observe that the papers were not taken upon me, and it can be no treason to have seals, I suppose.

L. C. J. Holt. Good, my lord, I will not do your lordship any wrong; I do not say that

the papers were taken about you, no nor the seals; but only, that they lay upon the ballast from whence the packet was taken: and I say further, that these seals are not denied by your lordship to be your seals; the one is your own seal of your coat of arms, which was taken at that time, and so I do not your lordship any wrong, and by the grace of God will not.

L. Preston. It is no crime, I hope, to have seals.

L. C. J. Holt. I do say, my lord, the papers were taken about Ashton, and not about your lordship; but they lay upon the ballast where the seals were, and where your lordship lay: but how far my lord Preston is concerned in this matter, is to be considered by you of the jury by-and-bye.—Now, gentlemen, you have heard how earnest Mr. Ashton and Mr. Elliot were; one of them, to wit, Elliot, wished a thunder-bolt might strike the boat under water as they were coming back; and when they came through bridge, he wished that London-Bridge had fallen upon them and knocked them upon the head.

L. Preston. But I hope that is not to lie upon me neither, for I said no such thing.

L. C. J. Holt. No: but Ashton and Elliot did say these things, and how the case stands as to that in relation to your lordship, is to be considered. It is proved, they afterwards gave money to the seamen, half-a-crown a-piece, to two of them, to say they were going to Flanders, and not to France.—Now, Gentlemen, that my lord was on board this vessel, that my lord was under the hatches, and that the papers were taken in this manner, is beyond all contradiction: so likewise that the ship was hired for France; that my lord took water at Surrey-Stairs, and was taken in this vessel in that manner that you have heard.—The next thing, Gentlemen, is about the papers: I must tell you, though there are several of them that do seem mysterious, yet they are papers that do shew a very great design of deposing the king and queen, and a purpose of altering the present government.—But, Gentlemen, I will mention to you those papers that are very plain, and leave you to consider what construction to put upon those that are obscure. There is one paper that seems to be instructions and heads for a declaration, that is to say, that the king of France must not come with a design to make an intire conquest.

L. Preston. My lord, with submission to your lordship, I hope you will please to remember and observe to the jury, that paper is not proved to be mine.

L. C. J. Holt. No, my lord, I will do your lordship no wrong, but I cannot speak all my words at once.

L. Preston. I am sure you will not, my lord; but I beg leave to put your lordship in mind.

L. C. J. Holt. Well, then, Gentlemen, the paper begins, “That the king’s Declaration is
“to be formed in general terms; that he will

“govern by the laws; that they shall be the
“rule of his actions; that he will endeavour
“to settle liberty of conscience by a law, and
“that whatsoever was done by him that gave
“any occasion of jealousy, shall be settled by
“parliament. That the king hath given suffi-
“cient proofs and evidence of his not being
“willing to bring an army of strangers into
“the kingdom, by refusing the succours the
“king of France offered him, and that were
“even ready to be embarked upon the first
“notice of the prince of Orange’s coming.
“That he brings such an army only as is ne-
“cessary for his own defence, and securing
“such of his loyal subjects as should come
“to him; and that he will dismiss them as
“soon as he shall have rid the nation of those
“foreigners that had invaded us, and trampled
“upon the laws.”

So that, Gentlemen, here is a paper in this packet, that has plainly laid open and proved the design, and shews the meaning of it was to seduce their majesties subjects from their allegiance; it was to be in such general terms, making general promises, hoping thereby that people would be the more easily imposed upon to renounce their allegiance to their present majesties.

But, Gentlemen, the declaration imports farther, that the realm was to be invaded by foreigners; and to palliate it, it is pretended, that foreigners were only brought in to rid the nation of foreigners, and you know who are meant by that: so that this project was only to colour a foreign invasion; and this declaration was to direct them how, and upon what pretences they should invade this kingdom.

Gentlemen, there is no manner of doubt but this is a treasonable declaration, and if any person had this in his possession, and was going into France to carry, with an intention there to make use of it, that is treason, though it be couched under specious pretences of restoring people to their liberty: it was plainly a design to invade England by a French army.

L. Preston. My lord, that paper was not found about me.

L. C. J. Holt. No, no, my lord, it was not; but, good my lord, give me your favour, I will certainly observe every thing that is fitting; but I tell you I cannot do it all at once.

Then, Gentlemen, there is another paper found in the packet, that is said to be the result of a conference that was had between divers lords and gentlemen, as well Tories as Whigs, as they call them, to prove it possible to restore the late king by French arms; and how this may be effected, were proposals made: yet still it was pretended to preserve the Protestant religion, and the civil administration according to law.

And that it might be brought to pass, the credulous were to be imposed upon, and made to believe that the French king would not conquer England for himself; no, but he would conquer it for the late king; he would be at that vast charge, that great expence of men

and arms to restore king James, and make no profit of it himself.

And it was proposed how to seduce the people of England into a belief of the French king's kindness; he was to indulge the English Protestants in France, and let them have the exercise of their own religion there at their own charges; and this to satisfy the English Protestants, that his persecution of the Hugonots in France, was not out of aversion to the Protestant religion, but only because of their antimonarchical and resisting principles. So that they were proposing among themselves what they were to do to make the people believe the French king had no dangerous design against our religion and liberties; and if they could meet with persons to believe this, that was a probable way thought upon in this conference to get a great many adherents to the French king, thereby this invasion was to be facilitated, and the whole project rendered more successful.

There is another thing, Gentlemen, in this paper, and that is this: they complained of the mismanagement of their affairs at St. Germain; that though they did earnestly desire the restitution of the late king, yet there was always some foolish thing or other that came from St. Germain that obstructed their design.

What that foolish thing is, I cannot say, it does not appear; but whether it were not too great a discovery of their zeal for popery, and the advancement of the Popish religion, is worth your consideration.

And something is to be done for satisfaction of the people as to that; and it is advised that there should be seven or nine, or such a number of English men, that should go over, and be received into favour at St. Germain, and they should be of the council there, and these were to be Protestants; and that was to be a colour and pretence that the late king was reconciled to the Protestant interest, because he chose Protestant counsellors, and had received them at St. Germain, and was advised by them.

This, says the paper, will make the world believe, he is ours, and that we have gained him; which was to delude a great many of the people of England, that they should not be affrighted in case there should be such an invasion of England, but invited rather, and encouraged to join with the French when they came.

But, Gentlemen, the three last papers that have been produced to you, are papers that do somewhat more nearly concern my lord Preston.

The first paper contains several memorandums: it begins with lady D. 2,000*l.* who that lady D. is, I must leave it to you to imagine, though perhaps it may not be hard to guess.

It takes notice that the English and Dutch were like to join; and these memorandums do also shew a design and purpose of something to be done for the prevention of that conjunc-

tion. They seem also to be instructions to be made use of upon going into France to negotiate or transport some matters of dangerous consequence.

L. Preston. My lord, I hope that your lordship will observe, that these memorandums are broken kind of notes, incongruous and incoherent.

L. C. J. Holt. Ay, my lord, they are so, they are but broken things; but I say still, they are Memorandums that were to be used for some purpose: now I leave it to the jury to consider of the matter of them: what can be plainer than what is there expressed? The French are to come in time, before the Dutch and the English join, they are to watch their opportunity and come betimes, and they are to fight at the Chops of the Channel, and not to come so far as Beachy.

L. Preston. This is all but presumptive evidence, my lord.

L. C. J. Holt. I appeal to your lordship if it was not in the paper, and I appeal to the memory of the jury, whether I mis-repeat it or not.

The Paper mentions Jennings, and Strickland, and Trevannion, that they were to come from St. Malo's in one night: the king (meaning the late king) was not to be on board: and there were ships to lie at Newcastle to plague London: it is easy to understand what they meant. Among these memorandums, it is made as a remark, that the London clergy are the worst. It gives an account how Portsmouth was fortified, and Gosport, and what number of men were in them; and of the state and condition of our navy; what rates our ships were, and how many, and who were to be the commanders.

L. Preston. I beg your lordship to observe this is not treason.

L. C. J. Holt. I shall tell you that, my lord, by-and-bye: I am now stating the evidence.

Gentlemen, my lord Preston insists upon it, that these papers were not found about him: it is true they were not, but it does not therefore follow, that they were none of his papers: but you have three witnesses, Mr. Townesend, Mr. Bland, and Mr. Warr, produced to prove these papers to be my lord's hand; Mr. Townesend says, he was acquainted pretty well with my lord Preston's hand; he was one of his clerks in the office of the wardrobe; he says, he has seen my lord write several times, and does believe the writing to be his hand; and to the same purpose says Bland; and Mr. Warr swears to one of the papers, that he believes it to be my lord Preston's hand.

L. Preston. I hope your lordship will please to observe to the jury, that this is only a proof of similitude of hands: nobody see me write them.

L. C. J. Holt. They only say they do believe it to be your hand: nobody says they saw you write them; if I omit any thing, pray tell me when I have done.

Gentlemen, there are other papers which have been produced and read, that are writ in canting terms, which yet plainly shew the general design; they tell the party, that counsel are of opinion, he has a very good title; they hope he will appear himself, and if the cause be well solicited, it may come to a hearing before the end of Easter term. There is another matter mentioned in another letter which is under the disguise of trade, that the goods must come before the 1st of March. And another of them says, that unless the copper and the linnen come before the 10th of March, they should lose this summer's profit. Gentlemen, what can be the meaning of all this?

L. Preston. I know not indeed, my lord.

L. C. J. Holt. In another of the papers it is said, It is thought our fleet will be ready by March or April, but they believe not till June. Truly, Gentlemen, I have not been able to take particulars of every letter, but I must leave it to your observation; only there is one of them that makes mention of acquainting my lord with the condition of the writer, and direction is therein given to speak to the hearer; and what other lord was there, but he, in the company?

L. Preston. I desire to observe, my lord, that I was not the bearer.

L. C. J. Holt. Truly, my lord, I cannot tell who was meant; I must leave it to the jury to judge of that; but there was no other lord in that company.

L. Preston. I give your lordship thanks for observing that it was not proved that they were taken upon me before; but I beg your pardon for interrupting of your lordship.

L. C. J. Holt. Interrupt me as much as you please, if I do not observe right; I will assure you I will do you no wrong willingly.

Now, Gentlemen, the question is, in the first place, whether this be treason? and I told you before, without question, if any persons do go into France to negotiate such a design as this, or do purpose to go into France, and do any act in order therunto, that is high-treason; and these letters do import high-treason as great as can be committed; a treason against the king and queen, a design to invade the realm, to subvert the government, to restore another prince to the throne by the assistance of foreign force.

There was a design to delude and impose upon a great many people; and those that would not be deluded into a belief by these fair pretensions of friendship, they were to be subdued by an army of foreigners.

Then, Gentlemen, the next question will be, how my lord Preston is affected by this evidence, and whether you have sufficient proof from what has been offered, to satisfy you, that he is guilty of this treason or no?

First, my lord tells you, there has not been a clear proof that these are the papers that were taken; for, (saith he) they have been conveyed from hand to hand, and therefore, possibly there might be some alteration made in them.

VOL. XII.

You, gentlemen, are to consider, notwithstanding this objection, whether the identity of the papers be not proved.

Captain Billop tells you, he took them, and in what manner; and afterwards carried them to my lord Nottingham, who laid them by for a little while upon his table, and captain Billop withdrew (that is part of my lord's objection) while my lord Nottingham examined my lord Preston: after that, my lord Nottingham called in Billop again, and Billop swears the packet was not opened, but remained intire in such manner as they were delivered to my lord Nottingham; and so says my lord Nottingham. Then captain Billop saw my lord Nottingham open it at that time, and he saw all these papers every one put up again by my lord Nottingham; so that he could not be deceived; and my lord Nottingham delivered them to him, and he carried them to my lord president, all sealed up with my lord Nottingham's seal: and my lord president tells you he opened them, and brought them to the king, and had them back from the king: but they were never out of his sight while the king read some of them, but he took them all, and brought them into the cabinet council, where my lord Sidney received all these papers that have been read, and marked them. You have my lord Sidney's oath that these are the papers he had from my lord president; you have my lord president's oath that he had them from Billop, sealed with my lord Nottingham's seal; you have my lord Nottingham's oath that he had them from Billop; and Billop swears that they were taken in the smack.

So that it is plain, if you believe this evidence, that they are the same papers. Besides, as to several of them, Billop marked them, and swears directly to them. If you believe these witnesses, as you have no reason, I think, to the contrary; it is plainly proved these are the very papers which were taken from the bosom of Ashton, and taken up by him from under the quarter hatches in the smack.

L. Preston. I beg your lordship's pardon for one thing.

L. C. J. Holt. My lord, what say you, pray? Say what you will.

L. Preston. With humble submission, there is one thing that I think the jury ought to take notice of, that when the papers were sent from Mr. Bridgman to my lord Sidney, they were sent by a messenger.

L. C. J. Holt. My lord, you are mistaken as to that objection, for my lord Sidney did not send them to Mr. Bridgman by a messenger, but he delivered them with his own hand, and after he had set his own mark upon them; and Mr. Bridgman says they were never out of his sight, he copied them all but two or three, the other Mr. Poultney copied in his presence, and so he swears he re-delivered them to my lord Sidney.

L. Preston. With humble submission, my lord, if I remember right, they were in a third hand.

3 B

L. C. J. Holt. Never, never.

L. Preston. Did not my lord Sidney say so, or Mr. Bridgman.

L. C. J. Holt. No, neither my lord Sidney, nor Mr. Bridgman said so; I suppose the jury are apprehensive of the matter; I would not mislead them, I'll assure you, nor do your lordship any manner of injury in the world.

L. Preston. No, my lord, I see it well enough that your lordship would not; I am for my life, and beg your lordship's pardon for interrupting of you.

L. C. J. Holt. Gentlemen, the next thing is to consider, whether my lord Preston be answerable for these papers, or a party in this treason.

First, Gentlemen, I would have you to consider, that there was the hiring of a vessel for France: it is true, my lord Preston was not present at the bargain; but you observe, that my lord Preston, his servant, Ashton, and Elliot took water at Surrey-Stairs, on purpose to go on board that smack.

Now, gentleman, whether or no you can intend any other ways than that my lord Preston was privy in the hiring of this vessel, though he was not present at the hiring of it; for how should my lord Preston be ready to take water with them at Surry-Stairs? Can you imagine my lord came there by chance, and took a sudden resolution? If you can imagine that he came only to go on ship-board, without knowing the previous design, truly you imagine a very great thing for my lord's advantage.

It is plain he went voluntarily, without compulsion; truly, I think the evidence is very strong to induce you to believe he was privy to this design, and that he did know of hiring the vessel.

L. Preston. I hope your lordship will observe, at the same time, that I was never seen before we took boat.

L. C. J. Holt. My lord, I have observed it, and I lay that weight upon the evidence that I think it will naturally bear, and no more; and leave it to the jury to consider, whether your lordship was privy to the design or no, when they weigh the circumstances of the evidence together.

L. Preston. I hope I shall not be condemned upon presumption and argument.

L. C. J. Holt. What weight the evidence has they will consider.

And then, gentlemen, there is another thing that I would observe: why should my lord Preston, a nobleman, a person of his honour and quality, put himself in such a place as he was found in, and that twice? It must sure be out of an apprehension of some danger. As for the seamen, they were secure enough; they were not frightened, because they thought they were protected, and my lord Preston knew he was not liable to be prest: the master of the vessel tells you they were fearful, and therefore hid themselves in a place they could not stand in, nor sit in, there was the gravel and ballast, it was uneasy to them, dangerous to their health

to be there. Gentlemen, why do men avoid the light and put themselves under covert, unless they have some evil design? Persons that are innocent seek not obscurity. The seals were found there, and my lord does not deny they were his seals.

L. Preston. I do not deny that: I hope it is no crime to have such seals.

L. C. J. Holt. Ay but, says my lord, that does not affect—because the papers were not found about me, but were found about Ashton. Gentlemen, if you can imagine my lord Preston had a different design from the rest of the company, that were with him, then you may acquit my lord, and find him not guilty. But it is left to you to consider, whether he had not the same design with them. Besides there is mention made in one of the letters, 'my lord,' and there was no other lord but he; and here are papers proved to be my lord's own hand, containing several of the matters of which he stands indicted, and he would have had the captain to have disposed of the papers.

Now, Gentlemen, what account does my lord give you where he was going? It seems they did pretend at the time they were taken, and they would have had the master of the vessel said, that their design was for Flanders; but the witnesses tell you positively, that the vessel was hired for France.

Truly, gentlemen, I must leave the matter to your consideration, whether my lord be guilty of this design or not guilty.

There is another thing that my lord has urged (for I would not willingly omit any thing material on the one side or the other) he says his indictment is laid in the county of Middlesex, but the papers were not taken there, the ship they went on board lay at anchor in Surrey; and when they were taken, it was in the county of Kent, and so there is no proof of treason in Middlesex.

Ay, but gentlemen, give me leave to tell you, if you are satisfied upon this evidence that my lord was privy to this design, contained in these papers, and was going with them into France, there to excite an invasion of the kingdom, to depose the king and queen, and make use of the papers to that end, then every step he took in order to it, is high-treason, wherever he went; his taking water at Surrey stairs in the county of Middlesex, will be as much high-treason, as the going a ship-board in Surrey, or being found on ship-board in Kent, where the papers were taken.

Gentlemen, I have failed of recollecting several of the particulars of the evidence, because they are many; and you will not depend upon my recollection of things so very incoherent as some parts of the evidence in the papers are, but upon your own notes and observations.

If you do think, having heard this evidence, that my lord was not concerned in this matter, that my lord had no design to go into France with these papers, but that he was an utter stranger to all these things, then you are to acquit my lord. But if you believe my lord was

privy to, and knew of the hiring of this vessel, and that he went to carry on the design contained in these papers; and that he wrote some of these letters, and with the others he was acquainted, then you are to find him guilty.

L. C. J. Pollexfen. My lord, if you please, I would observe one thing to the jury.

L. C. J. Holt. Ay, by all means, my lord.

L. C. J. Pollexfen. Gentlemen of the jury, I shall say but a few words to you, because indeed my lord has summed up the evidence very fully, for matter of law: I am fully of opinion there never was a more black nor horrible treason than is in this plot that is now discovered; for I think Englishmen have no greater enemies than the French and the Papists, and you see this is a plot to bring in both; and therefore I think there was never any thing of greater consequence to the government and the nation, than to have this plot detected and punished; though perhaps never any thing was more improbable than this same plot, that it should ever take effect, whatsoever they promised to themselves, and their desire of having it effected might persuade them to the contrary.

But, Gentlemen, the thing that I would mention about the matter before you now, is this; here are three papers, that by three several witnesses, acquainted with my lord's hand-writing, are testified, as they believe, to be his hand-writing; if so, then there is an end of all, for therein is a horrid deal of treason contained. If these instructions, these memorandums, these heads that were written down, were my lord's, and he did intend to go with these in a voyage towards France, that will be sufficient of itself, if there were nothing else in the case to maintain this indictment.

But, Gentlemen, you have in the rest of the papers that were taken, a great character of 'the bearer'; that 'the bearer' had done great things; that 'the bearer' could inform them fully of every thing; and there should be full and intire confidence put in 'the bearer,' and a great many such phrases.

But, says my lord, I was not the bearer, it was Mr. Ashton that the papers were found about; it does not appear directly who the bearer was; and they were not found about me.

Now, Gentlemen, pray let us look a little how this evidence stands: pray where was this bundle found? even upon the gravel, where my lord Preston and Mr. Ashton lay; there was it found, and my lord's own seal with it.

How, in the name of God, came my lord's seals to be found with other people's papers, if they did belong to any body else? How came they together in that place? It may be, he had a mind to leave his seals behind him, because they would discover his quality. But why should my lord Preston have all this fear upon him? why should two men go and take a ship for themselves and two others; and when they came to take boat, take in my lord, and his man, if they were not the two others that were designed? and this to be done at night in the dark? why should my lord be under

such terrible apprehensions, as to creep into a hole so unfit for one of his quality.

Why do you not hear from my lord some good account from what occasion my lord and his man were going to France? or whither else my lord was really going? for some where or other it was plain he was going.

Gentlemen, no man goes into an enemy's country without some licence, unless he go upon some ill design: fear seldom is without some guilt; and there appears throughout the whole management of the story, that there was a great deal of fear upon these gentlemen.

Besides, afterwards, when he is taken, and the letters taken with him in the same company, you hear what endeavours there were to suppress the truth even by my lord's desiring to have the packet disposed of; and my lord's man gave one of the seamen half-a-crown to say they were going to Flanders, not to France. I suppose the man knew how unfit it was to be known that they were going to France: and my lord's two companions spared for no pains to get the packet thrown overboard; though all that my lord said was what great kindness he would do him when it lay in his power, if he would dispose of the packet; I suppose that is very easily intelligible.

Gentlemen, there is one thing which is mentioned in one of the particular letters, that I desire particularly to observe to you, and that is all I shall say to you: here is a letter in my hand that in divers places has somewhat remarkable; it says, 'Your daughter and I must starve, if this government can make us: that the party did not repine at all for having lost all for your sake, which your favour had bestowed.' And in another place this letter doth say, 'Your daughter grows very tall, and very pretty, as I am told.' But that which I chiefly mention it for, is, it's twice mentioned, 'My lord will tell you all my condition, how I have been used; and I have told my lord my condition: what I desire of you, he thinks very moderate.'

And pray consider and remember, that the first article of my lord's paper, that is taken to be under my lord's own hand, there is two thousand pounds to the lady D.

Now if any body should put these together, do they lack any great interpreter for? For my part I leave them to you.

Then, in another place, towards the end of the letter, it is said, 'Pray, Sir, ask my lord how I have been used.'

Now this letter being thus taken, and there is never a one of the rest that was a lord, do you think any of the rest was meant? I must leave it to you.

If my lord Preston had produced any testimony to prove his own good carriage and behaviour towards the present government, it had been very much for his advantage, and might have had great weight with you; but when things appear only in this manner as they do now, I must leave it to you.

Gentlemen, it is a great matter, and of great

moment; if those that conspire against the kingdom, against the Protestant religion, and against the present government, may do it with impunity, it will be worth the considering what the consequence of that may be. Your own consciences require you to do right and justice on both sides; and if you are satisfied he is not guilty, you will find him so; if you are satisfied that he is guilty, you will find him so.

L. Preston. My lord, may I have the liberty to say any thing before the jury go out?

L. C. J. Holt. Your lordship should have said what you had to say before: It is contrary to the course of all proceedings in such cases to have any thing said to the jury after the court has summed up the evidence; but we will dispense with it. What has your lordship to say?

L. Preston. My lord, I humbly thank your lordship; I am not acquainted with such proceedings.

L. C. J. Holt. My lord, you know I permitted your lordship to interrupt me as much as you would, which was never done before in any such case.

L. C. J. Pollexfen. It is contrary to the course of the court: but yet, if you have any thing to say to the court or the jury, for this once we permit it.

L. Preston. Gentlemen of the jury—

L. C. J. Holt. My lord, what you have to say, pray direct yourself to the court, that we may hear what it is.

L. Preston. My lord, I only desire the jury may be informed, that I am a Protestant, that I was baptized in the religion of the church of England, and have always lived in it, and hope to die in it. My lord, it is true, things have been urged with severity against me that are a little hard, in making that, which I hope will amount to but a presumption, to be a proof; as in the case of the letters that are written in a cant, and my intention to go to France, and those words in the letter, where my lord the bearer is named. But your lordship observes, that that letter is not directed to any body, and that is full of cant as well as all the rest; why should I be supposed to be the bearer any more than either of the others, and they were found about one of them? But, my lord, for the reason of my going beyond sea, it was this; I designed to go to Flanders, or any place I could be driven to, and that ought not to be wondered at; for really I who had lived quietly after the loss of my places, upon this revolution, and suffered great inconveniences in my estate, and was retired to my own house, with a design to live a retired life, was imprisoned twice in the Tower, and proclaimed a traitor in every market town, without any indictment; and my imprisonment tended greatly to the impairing my health and my fortune; all this made me very uneasy here: and, my lord, I went under a fixed resolution to go to Flanders, or any place where I thought I could be quiet.

L. C. J. Holt. My lord, your lordship should have said all these things before, for it is not the course to reply upon the court; if you had had any thing to say, you know we heard you out of course, and I let you interrupt me as much as you did think fit, though that has not been allowed at any time before. But, my lord, pray let me say one thing more: Suppose your lordship did think yourself hardly used, though I know not any reason you had to think so: yet your lordship must remember, it was in a time of danger that your lordship was taken up before; and you had shewed your dissatisfaction with the present government, and therefore they were not to be blamed if they secured themselves against you: but if you had a mind to retire into the country, or to go abroad, was France the only country you could choose? A known declared enemy's country, at open war with the government?

L. Preston. My lord, I beg your lordship's pardon, if I give any offence.

L. C. J. Holt. No, my lord, you give me no offence at all; but your lordship is not right in the course of proceedings; I acquaint you with it, not by way of reproof, but by way of information.

L. Preston. Then I hope the gentlemen of the jury will consider, that all that is alledged against me is but presumption; my life and fortune, my posterity and reputation, are all at stake; I leave all to the jury's consideration, and the God of Heaven direct them!

L. C. J. Holt. If you go on thus to reflect on the court, you will make the court reflect upon you. The jury hear how the evidence has been stated; I think it has been done very impartially, and without any severity to you: Why should you think we would press the evidence further than it ought to go against you? You are a stranger to most of us, and I am sure we do not desire your life; but still we must take care that justice be done to the government and the kingdom, as well as to any particular person; and evidence that is given must have its due weight and consideration: If any one can design innocently to go into France, at this time of day, with such papers, and in such a manner, that I leave to the jury's consideration.

Then the Jury withdrew, to consider of the evidence, and the court adjourned for a little while, and returned in half an hour; and the Jury came in, and were called over, and appeared.

Cl. of Ar. Are you all agreed of your verdict?—*Jury.* Yes.

Cl. of Ar. Who shall say for you?

Jury. Our foreman.

Cl. of Ar. Sir Richard Grahme,* hold up

* Lord Preston claimed to be a peer of England: as to which, the following extracts are made from 14 Lords' Journals, pp. 336, 7, 8. 354, 5.

“Nov. 9. The House being informed,

your hand (which he did.) Look upon the prisoner. How say you? Is he guilty of the felony and high-treason whereof he stands indicted, or not guilty?

Foreman. Guilty.

Cl. of Ar. What goods and chattels had he?

‘That Richard lord viscount Preston, of the kingdom of Scotland, claims the privilege of a peer of this realm:’

“It is thereupon ordered, by the lords spiritual and temporal in parliament assembled, that the said lord viscount Preston do attend this House on Monday next, at eleven of the clock in the forenoon.”

“Nov. 11. Then the lord viscount Preston appeared; and was told by the Speaker, ‘that the House being informed that he claims the privilege of a peer of this realm, they had sent for him, to know upon what ground he did so.’

“He said, ‘The earl Mountague had commenced a suit against him; that he was ready to give his lordship an appearance, though he had a patent to be a peer of this realm, from the late king James, before the vote of abdication passed; and he thought he had the privilege of a peer.’ And then he withdrew.

“After debate, the patent being sent for, and brought in, bearing date, Apud Fanum Sanct. Germani ad Layam, 21 Januarii, Stilo veteri, Anno Regni Nostri 4to.

“Upon this, the House made this ensuing order. ‘Ordered, That the Gentleman Usher of the Black Rod do take Richard lord viscount Preston immediately into his custody.

‘To sir Thomas Duppa, Gentleman Usher of the Black Rod attending this House, his Deputy and Deputies, and every of them.’

“Ordered, That all the judges do attend this House to-morrow, at ten of the clock in the forenoon; at which time the House will take into consideration the lord viscount Preston’s patent, and the lord Griffin’s case.”

“Nov. 12. Next, the House took into consideration the patent of the lord viscount Preston.

“And the Speaker told the House, ‘That he had acquainted the judges with the particulars of the whole case; which they hold to be a high misdemeanor.’

“After debate, the House had this question put, ‘Whether the pretended patent sent into this House by the lord Preston, by which he claims to be a peer of England, be null and void?’ It was resolved in the affirmative, *nem. con.*, and so declared.

“Ordered, by the lords spiritual and temporal assembled in parliament, that the pretended patent of the lord viscount Preston be kept in the custody of the clerk of the parliaments, until further order of this House.

“Ordered, by the lords spiritual and temporal in parliament assembled, that their majesties attorney general do prosecute Richard

Foreman. None at all that we know of.

Then the Verdict was recorded.

L. C. J. Pollexfen. I think, truly, gentlemen, you have done according to your evidence; and though it be a hard case upon par-

lord viscount Preston of the kingdom of Scotland, in their majesties court of King’s Bench, for a high misdemeanor, in claiming to be a peer of this realm by his pretended patent.

“To sir George Treby, their majesties attorney general.

“Ordered, by the lords spiritual and temporal assembled in parliament, that the Gentleman Usher of the Black Rod do carry Richard lord viscount Preston, now in his custody, to their majesties Tower of London; there to be kept in safe custody, until he shall be delivered by due course of law.

“To sir Thomas Duppa, Gentleman Usher of the Black Rod, his Deputy and Deputies, and every of them.

“Ordered, by the lords spiritual and temporal in parliament assembled, that Richard lord viscount Preston, of the kingdom of Scotland, be, and is hereby, committed prisoner to their majesties Tower of London, for high misdemeanors, in claiming to be a peer of this realm by his pretended patent, there to be kept in safe custody; and this shall be a sufficient warrant in that behalf.

“To the right honourable the lord Lucas, chief governor of their majesties Tower of London, his deputy and deputies, and every of them.”

“Nov. 27. Upon reading the humble petition of Richard lord viscount Preston, of the kingdom of Scotland, now prisoner in the Tower of London by order of this House; shewing, ‘That he is very much concerned and troubled that he hath incurred the displeasure of this house; and that he never had a thought, purpose, or in the least a design, to misde-mean himself in any thing towards this house, or of doing any thing that should give the least offence thereunto; and praying to be discharged from the confinement under which he lies:’

“It is thereupon ordered, by the lords spiritual and temporal in parliament assembled, that the order of this house, made the 12th of November instant, wherein their majesties attorney general was ordered to prosecute Richard lord viscount Preston, of the kingdom of Scotland, in the court of King’s Bench, for a high misdemeanor, be, and is hereby, superseded: and it is further ordered, that the said Richard lord viscount Preston be, and is hereby, discharged from his present imprisonment in the Tower; and that this shall be a sufficient warrant on that behalf.

“To the right honourable the lord Lucas, chief governor of the Tower of London, his deputy and deputies, and every of them.”

ticular men that have brought themselves into these inconveniences; yet it is necessary justice should have its due course, or else there is no longer living for any man in any society or government.

Then the prisoner was carried back to Newgate, and the court adjourned till Monday morning following at seven o'clock.

Monday, January 19, 1691.

The Court being sate, the Jury was called over, and the appearance of those who answered recorded. Then Mr. Ashton and Mr. Elliot were brought to the Bar; but Mr. Elliot was ordered to be carried back to Newgate, the King's Counsel resolving to try Mr. Ashton by himself.

JOHN ASHTON, hold up thy hand (which he did.) Those men that you shall hear called, and personally appear, are to pass between our sovereign lord and lady our king and queen, and you, upon your trial of your life and death. If therefore you will challenge them, or any of them, your time is to speak as they come to the book to be sworn, and before they be sworn.

Ashton. Pray stay a little.

L. C. J. Holt. What say you, Mr. Ashton?

Ashton. My lord, I humbly desire your lordship will allow me the benefit of pen, ink, and paper.

L. C. J. Holt. Pray let him have pen, ink, and paper.

Ashton. And likewise that you would give my solicitor leave to be as near me as possibly he can, only to refresh my memory, if I should forget any thing.

L. C. J. Holt. That is a thing you cannot of right demand; the other, of pen, ink and paper, you may.

Ashton. My lord, I shall acknowledge it as a very great favour.

L. C. J. Holt. That is an innovation that ought not to be; the court cannot allow it.

Ashton. I acknowledge it a favour; but if the court thinks it not fit to allow it, whatsoever your lordship shall order, I readily submit to.

L. C. J. Holt. You shall have pen, ink and paper; and what is fit for the court to do, they will do it.*

L. C. Baron. If the witnesses say any thing that you do not hear, you must speak to the court, and you shall have them say it over again.

[Pen, ink and paper was given to the prisoner.]

Cl. of Ar. Sir William Hedges, knight. (He appeared.)

Ashton. My lord, I would not trouble your lordship and myself with unnecessary chal-

lenges; I intend to put myself with an entire dependance upon the first twelve men that appear, be they who they will.

L. C. J. Holt. What you please for that matter, you have your own choice.

Ashton. Whoever they are, I submit to them; I know them not.

Cl. of Ar. Swear sir William Hedges. (Which was done.)

And so were the eleven next succeeding in the pannel; and the names of the twelve sworn follow: sir William Hedges, knt. John Wolstenholm, James Boddington, Thomas Johnson, Ralph Bucknall, Lucy Knightly, Thomas Cuthbert, John Herbert, John Tully, Thomas Smith, William Withers, and Daniel Thomas, esquires.

Then the jury were numbered, and proclamation made for information and evidence in the usual manner.

Ashton. Gentlemen of the jury, if you desire pen, ink, and paper, I hope the court will take care to provide them for you.

L. C. J. Holt. Ay, ay, let the gentlemen of the jury have pen, ink, and paper.—(which was done.)

Cl. of Ar. John Ashton, hold up thy hand. (Which he did.)

Gentlemen, You that are sworn, look upon the prisoner, and hearken to his cause: He stands indicted by the name of John Ashton, late of the parish of St. Paul's Covent-Garden, in the county of Middlesex, gent. For that he, together with sir Richard Grahme, late of the parish of St. Ann, in the liberty of Westminster, baronet, who stands convicted of high treason, and Edmund Elliot, late of the parish of St. James, in the said liberty, gent. For that they, as false traitors, &c. (Prout in the indictment, *mutatis mutandis*) and against the form of the statute in that case made and provided. Upon this indictment he has been arraigned, and thereunto hath pleaded not guilty, and for his trial hath put himself upon God and the country, which country you are: Your charge is, to enquire whether he be guilty of the felony and high treason whereof he stands indicted, or not guilty: If you find him guilty, you are to enquire what goods or chattels, lands or tenements, he had at the time of the felony and high treason committed, or at any time since: If you find him not guilty you are to enquire whether he fled for it: If you find that he fled for it, you are to enquire of his goods and chattels as if you had found him guilty: If you find him not guilty, nor that he did fly for it, you are to say so, and no more, and hear your evidence.

Mr. Knapp. May it please your lordship, and you gentlemen of the jury; This is an indictment of high treason against John Ashton, the prisoner at the bar; and the indictment, gentlemen, charges him, That he, as a false traitor against their present majesties king William and queen Mary, his supreme and natural lord and lady, not weighing the duty of his allegiance, did, upon the twenty-ninth

* See a Note to the Case of Don Pantaleon Sa, vol. 5, p. 466.

of December last past, together with sir Richard Grahme, who stands convicted, and one Edmund Elliot, and divers other ill-disposed persons, unknown to the jury, did conspire, imagine, and intend to depose and deprive the king and queen, and to bring them to death and destruction, and to subvert and alter the government; and to cause war and rebellion within this kingdom against their majesties; and to bring these intentions and purposes to pass, the prisoner, with the rest of them, did prepare divers notes, papers, letters, and memorandums in writing, which were to instruct the French king, and other enemies of the king and queen, of the number of their majesties men of war, how they were manned, and the names of the commanders of several of them, and to inform them how the castles and forts of Portsmouth, Southsea, and Gosport were fortified, and how they might be surprised by the king's enemies; and of the times, ways and means how they might invade the kingdom, in order to depose the king and queen; and to procure and incite such an invasion: and further to bring these purposes to pass, the prisoner and the other traitors did secretly conceal, and detain in their custody, several bills of exchange, for the payment of money to the king's enemies, and the several letters, notes, and memorandums before mentioned, which were for the purposes I before opened to you: and further, to bring these purposes and treasonable intentions to pass, they did for 100*l.* hire and prepare a ship, which was to carry them secretly out of this kingdom into France, with an intent there to deliver these instructions, and memorandums, and bills of exchange into the hands of their majesties enemies; and did hire a boat to carry them to the ship, and did enter into it at St. Clement Danes, within your county, and rowed to the ship, and went on board the ship, and there with the bills of exchange, notes, and memorandums, they set sail to go to France, in order to deliver them to the French king, and other enemies of the king and queen: and the indictment doth further set forth, that there hath, and still is, a war between the French king and our king and queen; and that he and his subjects are enemies to the king and queen and their subjects; and that during this war, the prisoner, together with the rest that were before named, were adhering to the king and queen's enemies in this war; and in pursuance thereof, did prepare such letters and instructions before opened, and had, and concealed in their custody, and hired a ship and a boat, and went into the ship, and set sail in order to go for France, to aid and assist the king's enemies there with money, intelligence, and counsel: and this is laid to be against the duty of his allegiance, against the peace of the king and queen, their crown and dignity, and against the form of the statute in that case made and provided. To this he hath pleaded not guilty: if we prove him guilty, you are to find him guilty.

Serj. Thompson. May it please your lord-

ship, and you gentlemen of the jury: the prisoner at the bar stands indicted of a very heinous offence, no less than high treason, the greatest offence that can be committed against any human law. You have heard the particulars in the indictment read. I will not trouble you with any repetition, but go to open the evidence according to the steps that are obvious in the case. You have heard in general, the design was to depose this king and queen, which the law expounds to be to bring them to death and destruction: you have heard it was to alter the government, and cause a rebellion in the kingdom, and to bring in a foreign power; and these are laid to be the heads of the offences that the prisoner stands charged with.

Gentlemen, the first step that was made in this matter was by the prisoner at the bar; for there was one Mr. Burdett, which it seems had been one of his acquaintance, and had undertaken to bring him acquainted with a person that could furnish him with a ship; and in order to that, one Mrs. Pratt had the management of the smack which belonged to her husband; she, by Burdett's means, was brought to Burdett's house, where she met Mr. Ashton, the prisoner at the bar, and they had some treaties about the hiring of a ship; the purpose declared by the prisoner then, was to hire a ship to go to any part of France, and he would give a considerable reward for it; he said it was for himself and three more. They did not come to any conclusion about the ship, but there was an appointment made, to have the master of the ship to meet with them at the Wonder tavern, in Ludgate-street; and in order to that, Paseley, that is the master, and the woman, came there and met with Mr. Ashton; but because Mr. Burdett was not there, they came only to this proposal, 150*l.* was demanded for the hire of this vessel; but there being no conclusion then made, they thought it better to do it at Burdett's house; and about a day after they came to Mr. Burdett's, and then it happen'd that Elliot, one of the persons that is indicted, but not one before you, came thither too; and at that time it was agreed to give 100*l.* for the hire of the ship. Ninety-three guineas were deposited in Mrs. Burdett's hands; and there was a token past betwixt them by the breaking of a sixpence, one part whereof was to lie with Mr. Ashton, and the other with Mrs. Burdett; and whenever the master of the vessel brought back the broken piece of sixpence that Mr. Ashton had, then she was to pay the money, that being the sign that they had attained their ends, and were safely landed in France.

The next step they take is this, they appoint to meet at the Seven Stars in Covent-Garden; thither the master of the vessel and the woman were to come, and that was near the time that very day that they designed to go down; and there was Mr. Ashton and Mr. Elliot, but the other person did not appear as yet; there the seamen were ordered to go

along with them, and thence they went down to the water-side, to Surrey-stairs, and the waterman was called, and in the mean time came my lord Preston and his man to them, and they four did go in that boat, by the direction of the master, and were carried on board his smack.

After they came on board (for I would note the particular circumstances) they were very apprehensive of danger, for they knew what they went about, their own guilt gave them reason of fear, and when they came near a man of war, which lay at anchor in Long-Reach, in the river, they desired the master to hide them, that they might be safe from any search, and they were hid and put close under the hatches for some time; afterwards, when they came to another place of danger, it was by the Block-houses at Gravesend (as they apprehended), there they desired to be hid again; and so they were put in that place, where they were in very difficult circumstances under the hatches, and there they remained till a pinnace, that had been sent to enquire after them, came and boarded this same vessel.

Upon its boarding of them, the captain made a search, and found these gentlemen, my lord Preston, Mr. Ashton, and Mr. Elliot, and I suppose his man also, all hid under the hatches.

Then the next thing which is observable, gentlemen, and the great matter that will shew where the treason was, is this, there was a bundle of papers that was on board, ready prepared, if they had not been surprized, but could have had an opportunity for it, to have been cast overboard, and there was lead fixed to it, to have sunk it; and Mr. Ashton, the prisoner at the bar, was the person that concealed this bundle of papers betwixt his body and his coat, and from thence it was taken by the captain that took them.

When they were so taken, the captain, according to his duty, was bringing the prisoners to Whitehall, they desired to go on shore at Gravesend, but the captain did not think that so fit, but carried them on board the *George* frigate, and then you will hear these gentlemen did fall into a treaty with the captain to suppress these papers; and one instance I remember they did tell him, that since there were a parcel of papers that he had taken out of my lord Preston's pocket, he might take off the lead and fix it to those papers, and sink the others; and what should he have for it? They promised him great rewards, they told him he might be a great man, he had an opportunity of making his fortune; and when that would not do, they used many threatenings to him, all which will appear in the several circumstances that the witnesses will tell you of.

I come, gentlemen, in the last place to shew you, that all the whole conspiracy, all this treason, did lie hid under this bundle of papers that were taken from Mr. Ashton, and so he might well be afraid of having them opened, for there you will find a formed design to alter this government by a French power and as-

sistance; and they contain so many particulars, that in regard I would not do the king's evidence injury on the one hand, nor the prisoner on the other, I will forbear repeating the particular instances.

Gentlemen, you will have all the letters and papers read; but in the general, I must needs say, you will find it manifest, that there is a black and wicked conspiracy to introduce a foreign power to establish the Protestant religion, and that by a popish interest, and to settle our laws, liberties, and properties by a French army. And let them pretend what they will for the Protestant religion, when you hear these papers read, no-body will imagine it was to any other purpose (if the plot had taken effect) but to have what religion, what laws the French king had pleased to impose upon us.

If the prisoner be guilty, gentlemen, of these matters, I know you will do your duty; but if he be not guilty, God forbid that you should find him guilty.

L. C. J. Holt. Call your witnesses, brother.

Serj. Thompson. We begin with Mrs. Pratt. [She was sworn.]

Sir W. Williams. Look you, Mrs. Pratt, here is another gentleman at the bar to be tried, against whom you are called as a witness.

Mrs. Pratt. Yes, my lord.

Sir W. Wil. Pray hear what we ask you. Pray do you give the court and the jury an account, what treaty you had with that gentleman about a vessel to go to France, and what was done in it?

Mrs. Pratt. If it please you, my lord, I was sent for to Mr. Burdett's house in Queen-street by Cheapside, to know whether he could have a smack to go for France; I told him yes, I could help him to one; he told me, there were two or three gentlemen bound for France, as merchants to fetch silk, and I was at Mr. Burdett's two or three times, and at last Mr. Ashton met me there.

L. C. J. Holt. Look upon the gentleman, is that he?

Mrs. Pratt. Yes, that is the gentleman, and he met me there, and meeting with Mr. Ashton, he hired the vessel; but, first of all, he desired us to meet at the Dog tavern upon Ludgate-hill, to make the bargain, and we did meet there, and were there about an hour, or an hour and a half, and Mr. Burdett did not come; and the next morning Mr. Ashton desired me to meet him at Mr. Burdett's again; and the next morning I met at Mr. Burdett's, and there we made the bargain for 100*l.* and there was a sixpence broke in two pieces.

Serj. Tremain. Was the 100*l.* paid?

Mrs. Pratt. Yes; but we agreed on the Tuesday morning, and there was a sixpence broken in two, and Mr. Ashton had both the sixpences in his hand, and the Tuesday night the 100*l.* was paid at Mrs. Burdett's.

Sol. Gen. Who was by?

Mrs. Pratt. There was one Mr. Elliott, and the master of the smack, and Mrs. Burdett.

Serj. *Tremain*. Did they pay the money in gold or silver?

Mrs. *Pratt*. This gentleman, Mr. Ashton, told the money, there was 93 guineas and a sixpence, and Mr. Ashton gave one half of the broken sixpence with the 93 guineas, to Mrs. Burdett; and when the master of the vessel brought the other half of the sixpence, or I, either of us, we were to have the 100*l*.

Sir *W. Wil*. Pray to what place did they hire the ship to go?

Mrs. *Pratt*. To France.

Sir *W. Wil*. Who hired the ship?

Mrs. *Pratt*. That gentleman.

Sir *W. Wil*. Who paid the money?

Mrs. *Pratt*. That gentleman, Mr. Ashton.

Sir *W. Wil*. To what hand was the money paid.

Mrs. *Pratt*. It was paid in Mrs. Burdett's bed-chamber into her hand.

Sir *W. Wil*. Who broke the sixpence?

Mrs. *Pratt*. Mr. Ashton, that day the bargain was made.

Sir *W. Wil*. Who carried it away?

Mrs. *Pratt*. When the money was paid, Mr. Ashton had one, Mrs. Burdett had the other part.

Serj. *Tremain*. To which part of France were you hired to go?

Mrs. *Pratt*. To any part where they could touch.

Serj. *Tremain*. Pray did they give you any note about any thing?

Mrs. *Pratt*. Yes, they gave me one note to meet at the Dog tavern, and another to meet at the Seven Stars in Covent-garden.

Serj. *Tremain*. Who gave you the notes?

Mrs. *Pratt*. Mr. Ashton, and Mr. Elliot.

Serj. *Tremain*. Look upon that note. [Which she did.]

Mrs. *Pratt*. This to my best remembrance Mr. Ashton wrote, I cannot well remember the hand.

Serj. *Tremain*. Did Mr. Ashton desire to meet at the Dog tavern?

Mrs. *Pratt*. Yes, and he did meet at the Dog tavern; but Burdett did not come.

L. C. J. *Holt*. When did you meet at the Dog tavern?

Mrs. *Pratt*. On the Monday night before New Year's day.

L. C. J. *Holt*. When was the money paid?

Mrs. *Pratt*. On Tuesday night, at Mrs. Burdett's.

Serj. *Tremain*. After the money was paid, what did you do the next day?

Mrs. *Pratt*. Mr. Ashton ordered a note to be written, to meet at the Seven Stars in Covent garden, at one Mr. Rigby's.

L. C. J. *Holt*. At what time were you to go to Rigby's?

Mrs. *Pratt*. A Wednesday night.

L. C. J. *Holt*. But at what time?

Mrs. *Pratt*. Some time about ten o'clock, and we came there accordingly.

Sol. *Gen*. Who was with you at Rigby's?

Mrs. *Pratt*. There was the master of the

vessel, Mr. Ashton and Mr. Elliot, and two gentlemen more that I never saw before nor since.

Sir *W. Wil*. I ask you again, who first treated with you about hiring this vessel?

Mrs. *Pratt*. Mr. Burdett first treated with me about it.

Sir *W. Wil*. Who next?

Mrs. *Pratt*. Mr. Ashton.

Sir *W. Wil*. Who made the bargain with you?

Mrs. *Pratt*. Mr. Ashton.

Sir *W. Wil*. Who paid the money?

Mrs. *Pratt*. Mr. Ashton.

Sir *W. Wil*. What can you say more?

Serj. *Tremain*. Pray let me ask you, when you came to Mr. Rigby's, in what manner did you go away from his house, and what was said at parting?

Mrs. *Pratt*. Mr. Ashton was not there himself, at first; but he and Mr. Elliot, and two other gentlemen were there afterwards, and Mr. Ashton's wife said something about papers hove in a hat at court, and about somebody's being chosen; and one of the gentlemen said, there was nothing in that, I was one that was chosen last year.

Serj. *Tremain*. Did Ashton and Elliot go out together from Mr. Rigby's?

Mrs. *Pratt*. I did not see them go.

Mr. *Trevor*. Had you any directions from Mr. Ashton to send for a hamper or a trunk?

Mrs. *Pratt*. Yes, that was at Mr. Burdett's house.

Mr. *Trevor*. When was that hamper and trunk to be sent for?

Mrs. *Pratt*. On the Wednesday night before we went to Rigby's house.

Sir *W. Wil*. Do you know one W. Paseley?

Mrs. *Pratt*. Yes.

Sir *W. Wil*. Was he with them?

Mrs. *Pratt*. Yes, he was with them.

Sir *W. Wil*. What occasion brought him thither?

Mrs. *Pratt*. I carried him to Mrs. Burdett's house.

Mr. *Trevor*. Pray did the prisoner desire to see the master of the vessel, or speak with him?

Mrs. *Pratt*. Yes, and when I brought him, he said he liked him very well.

Mr. *Trevor*. What is the master's name?

Mrs. *Pratt*. William Paseley.

Serj. *Tremain*. Had you any discourse with Mr. Ashton's wife after they went away?

Mrs. *Pratt*. We had little discourse, only she gave me some victuals and drink; and she said she hoped I would not tell of her husband.

Serj. *Tremain*. What else did she say?

Mrs. *Pratt*. She hoped God would deliver them out of the lion's mouth.

Serj. *Tremain*. Did she say any thing about cock-crowing?

Mrs. *Pratt*. Yes, she said she thought she should have no good luck, for the cock crowed.

Serj. *Tremain*. Who was by in the chamber when the money was paid?

Mrs. *Pratt*. There was the master of the vessel by, and Mrs. Burdett.

Juryman. My lord, I heard her say something of some papers, which I do not very well understand. Does she know of any papers that the prisoner had?

Serj. Tremain. That was only about the two notes.

L. C. J. Holt. She talks of papers being shaken in a hat, but nothing can be made of it.

L. C. J. Pollexfen. If you would ask her any questions before she goes, now is your time to do it.

Ashton. My lord, I desire she may stand up again. Mistress, I ask a question, not so much in kindness to myself, as justice to another gentleman. You say Mr. Elliot writ one of the notes?

Mrs. Pratt. Yes, as I remember, it was that to meet at Mr. Rigby's.

Ashton. I do it to justify that gentleman, I take that note upon myself; and you say I hired the ship, and Mr. Elliot was by.

L. C. J. Holt. Look you, Mr. Ashton, Mr. Elliot is not now upon his trial, it concerns you only to ask such questions as relate to yourself. What is said now concerning Mr. Elliot, goes for nothing against him.

Ashton. My lord, I do it only to do him justice.

L. C. J. Holt. But you are to ask questions only for yourself.

Ashton. Remember, good woman, you are upon your oath; and have a care of forswearing yourself; my blood is at stake.

Mrs. Pratt. I am sure I say nothing but the truth.

Ashton. Did I ever speak to you of going to France?—*Mrs. Pratt.* Yes, you did.

Ashton. As I hope for salvation I did not.

Mrs. Pratt. And another thing you told me more, if I helped this well away, you would help me to the earning of 1,000*l.* before Lady-Day.

Ashton. Gentlemen, as to what was said of that kind, of helping her to 1,000*l.* is no great matter to the thing in hand; for if I was minded to go out of the kingdom, it was necessary to use all arguments I could, to persuade her to help me to go away.

L. C. J. Holt. Mr. Ashton, you must stay your time before you speak to the jury; make your observations upon the evidence to yourself, you shall be heard at large all that you can say in your proper time.

Ashton. I do assure myself, my lord, of all the favour that can be shown to a man in my circumstances.

L. C. J. Holt. You shall have all that is just, I do assure you.

Ashton. My lord, I am glad in the circumstances I am in, that I am to be tried before your lordship. But, good woman, by virtue of the oath that you have taken, did I ever speak to you directly or indirectly of going to France?

Mrs. Pratt. Yes, and you asked for a hole to hide what you might have occasion to keep secret.

Ashton. But I ask you about going to France; did I speak to you about going to France?

Mrs. Pratt. Yes, you did.

Ashton. Then, as I hope to be saved, I never spoke directly or indirectly of going to France to her.

Mrs. Pratt. You were not to go for Holland or Flanders, I am sure.

Ashton. Nay, I did take it for granted, that you did know before I met you, that we were to go to France; but I never spoke to you of it in my life, that I am sure of; but I only urge this to let your lordship know, that woman has forgotten herself.

L. C. J. Pollexfen. Mr. Ashton, you will have all lawful favour; but your time for arguing upon the evidence is not come.

Serj. Thompson. You must ask your questions now, and make your observations afterwards; you must reserve yourself for that, till after we have done.

Ashton. But then, my lord, I shall have too many things for my memory to retain; and therefore I beg leave, as they occur to my memory now, and as the witnesses go along, to make my observations.

Serj. Tremain. Mrs. Pratt, pray, when the vessel was hired, and you were told it was to go to France, what persons did Mr. Ashton say were to go with him?

Mrs. Pratt. Three persons he said were to go, but he did not name them.

Serj. Tremain. Then set up William Paseley. [Which was done.]

Sir W. W. What can you say of any for the hiring of a vessel?

Paseley. I did not know the vessel was hired before I came thither.

Serj. Thompson. Prithee tell us what thou dost know.

Paseley. The woman came to me when I was at Billingsgate, and said I must go a little way along with her; and as we were going, she told me it was to go to Mr. Burdett's in Queen-street; and when we came there, Elliot and Ashton were not within: but by that time we had been there a little while, in came Mr. Ashton, and presently after him Mr. Elliot; and Mr. Ashton bid the woman give him the money out of the place where it was.

Juryman. My lord, we do not hear him.

Sir W. W. Pray begin again, and speak out.

Paseley. I met with this woman at Billingsgate, and she told me I must go a little way along with her.

L. C. J. Holt. That woman, name her.

Paseley. Mrs. Pratt; and I went along with her, and asked her where she was going; she said up into Queen-street: and coming to Queen-street, we went to Mr. Burdett's house, I was never there in my life before. When I came there, Ashton nor Elliot were neither of them there; after a little while in came Ashton, and presently after in came Elliot, and he went up stairs into the bed-chamber; and being in the bed-chamber, they brought the

money out, rolled up in a half sheet of paper, set up an edge, and told it out at the window.

L. C. J. Holt. Who told it?

Paseley. Ashton told the money out; and after the money was told, he pulled out two pieces of a sixpence, and when he had pulled out the two pieces of a sixpence, he gives one half to this Mrs. Burdett, and the other half he kept himself; and he bid her pay this same money, when the other half sixpence that Ashton kept, came to this woman, to match that which she had; and after the money was told, we staid but a small while there, and came down stairs; and when we came down stairs we went down to Billingsgate. I think John Fisher was there, and we carried away with us a trunk and a hamper; John Fisher carried the trunk, and another man the hamper; and after that we had carried the things on board, I came up to the house again; and after I came up to the house, they directed us to go to the Seven Stars in the Little Piazza, there was a note written to direct us, which ordered us to go thither betwixt 10 and 11 at night. When we came there, I think there was neither of them there present, but by that time we had been there a small space, in they both came and sat down; and a gentleman came in and said the cock crowed, and therefore they should have no good luck. And then they talked about papers being tossed in a hat, I don't know what, and in came two gentlemen more, just before we went away, to see them; and after those gentlemen had seen them, they staid but a little while. Says Elliot to me, Master, come along with me; so I went along with him, and we came to Surry-stairs, and on the corner on the left hand, there was an ale-house. He called the waterman out of the ale-house, and he bid me go before, and I went down: and by the time that I had gotten down, the waterman came and hauled his wherry to, and I went in, and by that time I was gotten to the stern, down came Ashby and Elliot, and my lord, and his man.

L. C. J. Holt. You mean Ashton, not Ashby?

Paseley. Yes, my lord, that is the man. And after they had got into the wherry, and were seated, they bid the waterman put off from land, and so we went through bridge; and after we were through bridge, we got on board the smack, and they got into the cabin; and when they were got into the cabin, I called my men, and bid them haul up the anchor, and they did so; it proved to be but little wind, but that tide we got below Half-way Tree, and were forced there to drop our anchor, and stay till the next morning: the next morning we weighed anchor, and by that time it was nine o'clock, we got to Long Reach, where lay the George man of war, and there they hid.

Sol. Gen. And how was the biding, pray?

Paseley. It was down in the quarters under the hatches.

Sol. Gen. Why did they hide?

Paseley. We reckoned they would come on

board a pressing, and they bid me shew my protection.

Serj. Tremain. Did they desire to be hid?

Paseley. Yes; and after we came by the George man of war, they came up again, and remained afterwards in the cabin, till we came almost to Gravesend: a little before we came to Gravesend, they all hid again; and when they were hid, remained hid all, I think, but only Elliot, I think, he popt up; and they were resolved to go eat their victuals; but then I told them there was a barge a coming, and so he went down again, and there they remained till they were taken, for the barge was on board presently, and found them there.

Serj. Tremain. What kind of place was it that they were hid in?

Paseley. They could not sit, nor stand upright in it, but lay all along, or leaned on their elbows.

L. C. J. Holt. What did they lie upon there, pray?

Paseley. There was ballast, and slit deal a-top of the ballast.

Serj. Thompson. Well, what happened when the captain came on board?

Paseley. When captain Billop came on board, Master, says he, you have got a couple of stout young men, I must press them, or to that effect. I hope not so, captain, said I. Why what have you to shew? says he; I told him, I had a protection. Let me see it, says he: so I shews him my protection, and he looks in it. Well, says he, Master, I must look farther; and went to rights to the place where they lay, and found them lying all together. After they were taken, and were come out, captain Billop commanded them into his boat, and commanded me and my two men, to go into the barge; afterwards he set his man on shore at Hungerford-stairs; and when we came to Whitehall bridge, the gate was not opened, and we staid a little while at Whitehall bridge; and when we came a shore, Elliot gave me half-a-crown, and bid me say, when I came upon my examination, that we were bound for Flanders, and not for France.

Serj. Tremain. Where were you bound for, pray?

Paseley. They examined me in the chamber, when they paid the money, if I knew they went to France; and I told them, yes, very well.

Serj. Thompson. Did they desire you to go to any particular port in France?

Paseley. No, we were to touch at any place we could.

Sir W. Will. Did they mention any thing of Flanders to you?

Paseley. No, they did not.

L. C. J. Holt. Did any body mention going to France to you?

Paseley. Yes, they did. They asked me, whether I could carry them to France safe.

L. C. J. Holt. Who did ask you that?

Paseley. Elliot or Ashton, one of the two, I cannot directly say which; but if I be not mistaken, it was Ashton.

Serj. *Tremain*. When came you from Rigby's at the Seven-Stars, who came away with you?

Paseley. Ashton and Elliot.

Serj. *Tremain*. Did Elliot and Ashton both come out with you?

Paseley. Yes, they did.

Serj. *Tremain*. And did they part after they were come out?

Paseley. Yes, Ashton did go away from us presently after we were come out.

Serj. *Thompson*. When you came on board, had you any discourse with Ashton about going to France?

Paseley. No, not that I remember.

L. C. J. *Holt*. Did you go on foot from the Seven-stars?—*Paseley*. Yes.

L. C. J. *Holt*. And did they part after you come out?—*Paseley*. Yes, they did.

L. C. J. *Holt*. And who went with you, did you say?

Paseley. Elliot came with me.

L. C. J. *Holt*. Whither went Mr. Ashton then?

Paseley. I cannot tell, my lord.

Sol. *Gen*. What did he say to you when he went from you?

Paseley. He bid me go along with Elliot.

L. C. J. *Holt*. Was Mr. Ashton there as soon as you?

Paseley. Not quite; but by that time the waterman had got the boat to the shore, and I in the stern, they were all come down.

L. C. J. *Holt*. When Ashton came, who came along with him?

Paseley. I saw them all upon the stair-head; I was in the boat when they came. I never saw my lord, till he was upon the stairs.

Juryman. My lord, I desire to ask him, what the sum of money was that was paid at Burdett's?

Paseley. It was 93 guineas and six-pence.

L. C. J. *Holt*. Who brought it?

Paseley. It was laid down in the window.

L. C. J. *Holt*. But I ask you, who brought it?

Paseley. I did see Ashton bring it, and lay it down in the window, and he told it out, and put it up again, and gave it to Mrs. Burdett.

Juryman. My lord, I desire to know what is the usual rate to go to Flanders? What may a smack and three men deserve?

Paseley. Truly I cannot tell, I never went upon my own account in my life.

L. C. J. *Holt*. Mrs. Pratt, what say you, what is the usual rate to go for Flanders or Holland?

Mrs. *Pratt*. I believe they may go for a matter of 20*l.* or 30*l.*

L. C. J. *Holt*. You hear them, gentlemen, what they say?

Juryman. Yes; but, my lord, he says, he gave them notice the barge was a-coming: I desire to ask him, Did he know there was a design to search him or no?

Paseley. Sir, I knew that there was a search for seamen.

L. C. J. *Holt*. But did you know there was to be a search, in order to the taking these gentlemen on board you? For that is the question, I believe, the jury would ask you.

Paseley. No, I did not know of it.

Sol. *Gen*. But you say, these gentlemen desired to be hid?—*Paseley*. Yes.

Sol. *Gen*. And you hid them according to their desire?—*Paseley*. Yes.

Serj. *Tremain*. Before you went on board, had you any discourse of hiding? Did they ask you for a place to hide in?

Paseley. Yes, they did.

Serj. *Tremain*. Who did?

Paseley. Ashton and Elliot both asked if there were a place in the ship to hide them, and I told them, Yes, there was.

L. C. J. *Pollexfen*. Mr. Ashton, will you ask him any questions?

Ashton. My lord, I desire to ask him this question: did we desire you to come and hide us, or did you desire us to go down?

Paseley. You desired this of us, that if we saw any man of war's boat we would tell you, that you might be hid.

Serj. *Tremain*. Pray repeat that over again, did they desire you to give them information when any boat was coming, that they might hide, or did you desire them to hide yourself?

Paseley. They desired it of me.

Serj. *Thompson*. Then set up Charles Betsworth.

Serj. *Tremain*. Before Betsworth is examined, I would ask *Paseley* one question? Was there any coat left on board you?

Paseley. Yes, there were two coats of the waterman's left on board, and I took them and locked them up.

Serj. *Tremain*. Is that the man that owned the coats?—*Paseley*. Yes, it is.

Sir W. *Williams*. Then, Betsworth, will you give an account of what you know against the prisoner at the bar?

Betsworth. I cannot tell, my lord, I never saw the gentleman in my life before, that I know of.

Sir W. *Williams*. Prithce hear, friend, tell what you know of carrying any gentlemen on board the smack.

Betsworth. If it please your lordship, I was going home from our stairs about 7 or 8 o'clock in the evening; that is from Surrey stairs, and a gentleman called, Sculler. Said I to him, Sir, where do you go? Says he, As far as the Tower; said I, It is against tide, I cannot go; it will be ten o'clock before it be high water. Says he, will you go with us at that time? Said I, what will you give me? Will you give me half-a-crown? then I will carry you down, for I cannot stay out so late for nothing. Yes, says he, I will give it you. Then I came and brought my boat to the shore; he asked me then, what my name was; I told him Charles Betsworth. Says he, Will you be sure to stay till we come? Yes, said I, if you will be sure to come; and if I be not here, I will be at such a house, an ale-

house, that was there by; the sign of the Swan: so I staid, and carried a fare or two over the water; and about 11 o'clock comes a gentleman down, and calls Charles, and I went out of doors down towards my boat, and there comes one gentleman down, and a kind of a seaman, as I thought; and the seaman went into the stern, and the gentleman sat down at the back-board, and there was three gentlemen more came down the stairs into the boat; one had a whitish cloak, and the other a loose coat; and they brought a leather bag that would hold about a peck; so I put off with them, and rowed down the river, and all that I heard them say, was, when we came under the Temple, says one of the gentlemen, When do you hear the king goes away? Says another of them, He goes away a Tuesday; and when we got through bridge, one of the gentlemen asked where the vessel lay, and a man in the stern said, On Southwark side, over-against the Tower; and when we came a little below Battle-bridge, near Pickle-herring stairs, the master said, There lies the vessel, and it had a long pendant and a top-sail loose; so they paid me before they came on board, and when they were got a-board, away rowed I, and when I came to land to take out my sculls and things, there I mist my cloaths; and I rowed after them, thinking they could not be got far; but when I came to the place where they went on board, the vessel was gone, and I rowed down as low as Limehouse Reach, and in Blackwall Reach I overtook a vessel, which I thought was the vessel. I asked them who they belonged to, and they said they came from Horsleydown; and I made answer, I brought two fares on board a vessel at Pickle-herring stairs, and had forgot to take my cloaths that they had; they made answer, I brought no fare on board them; so I rowed on farther beyond Barkinshelf, and because there was no wind, I thought none could have gone beyond that place, and therefore resolved to row back again when it was flood; and I rowed up to Greenwich, but could not meet with the vessel; and I heard nothing of my cloaths, till last Friday was sevensnight I had my cloaths brought to me.

Sir W. Williams. Can you say this gentleman, Mr. Ashton, the prisoner at the bar, was one of them that you carried on board the smack?

Betsworth. No, I know never a one of them.

Serj. Tremain. But you say the persons that you took in at Surrey stairs carried away your cloaths with them.

Betsworth. Yes, Sir.

Serj. Tremain. Then I ask you, Paseley, is that one of the persons that he brought on board your smack?—Paseley. Yes, he was.

Serj. Tremain. How many came on board the smack?

Paseley. Four; my lord Preston, Mr. Ashton, Mr. Elliot, and my lord Preston's man.

Serj. Tremain. Did you take in your pendant?—Paseley. Yes, I did.

Serj. Tremain. When did you take it in?

Paseley. As soon as we weighed anchor.

Serj. Tremain. How came you to take it in?

Paseley. Elliot spoke to me to take it in.

L. C. J. Holt. Did they mention how many were to go in the smack?

Paseley. He said, there were three of them, not four, as I remember, that were to go.

Sir W. Williams. Will you ask him any thing, Mr. Ashton?

Ashton. No, Sir: but I desire the woman may not go out of court.

L. C. J. Holt. No, no; she shall stay.

Serj. Thompson. Then call John Fisher and James Amords. (Fisher stood up.)

Sir W. Williams. Pray do you acquaint the court and the jury what you know of this matter, whether you carried any things on board the smack, and what, and who came on board, and what happened?

Fisher. My lord, a matter of six hours before they came on board, my master carried me a-shore, and brought me to Mr. Burdett's house, and gave me a trunk, and I went with it, and another man with a hamper, and brought them on board; and about 11 or 12 o'clock, my master comes and brings Mr. Ashton and the other aboard; and he bid me go forward, and heave up the anchor, and so I did, and we went down the river; but we could go but a little way because there was no wind, and when we came to Halfway-Tree, the tide turning, we were forced to cast anchor again, and stay till the morning; and in the morning we weighed anchor again, about 8 o'clock, and about 9 we came into Long-Reach, where lay the George man of war, and then Mr. Ashton and they hid; and when we came below them again, they came up again till we came almost near the Block Houses at Gravesend, and there they hid again; and Mr. Ashton, I think, came up afterwards, and bid me go down to the hamper, and fetch them up some victuals for their dinner, and I went down and fetched up some beef, and Mr. Ashton took hold of it; and I took a bottle of wine or two out; and just before I brought all the victuals up, the barge was spied a-coming to us; and then he went down again, and there they hid, and the piece of beef was a top of them. Captain Billop, when he came near, waved his hat, to bid us lie by; and we did lie by till he came up to us; and when he came up to us, says he, Master, you have gotten a couple of good likely men, worth the coming on board for. Says the master, I hope, captain, you won't press them. What have you to keep you clear? Says he, I have a protection. Have you, says the captain? Let me see it. So he shewed him the protection, and he read both our names in it. Then, says he, Master, I must look farther; and he went down to the quarter-hatches, and took them up just where they lay. First my lord came out; and he searched them all as they came out:

Mr. Elliot came out next, and Mr. Ashton staid within, being the last man. And after he had searched them, and done what he pleased, he got all the papers and writings; then he commanded us all to go into the barge, and they came on board the George frigate in Long-Reach. And at the ship, Mr. Elliot came to us, and bid us say, we were going to Flanders. And after we came to Whitehall, Mr. Ashton gave me a half-crown piece, and bid me say, we were bound for Flanders, and not for France.

L. C. J. Holt. Was that after they were taken, or before?

L. C. J. Pollexfen. When was the first time, that they would have you say, they were bound for Flanders?

Fisher. It was on board the George frigate in Long-Reach.

L. C. J. Holt. Who was it that bid you say so?

Fisher. Mr. Elliot and Mr. Ashton both, in the ship's steerage, where they came to us.

L. C. J. Pollexfen. Where was the next place they bid you say so?

Fisher. At White-hall bridge Ashton gave me a half-crown piece, and bid me say so.

Juryman. Did he speak that aloud, or softly at Whitehall?

Fisher. He whispered it in my ear.

L. C. J. Holt. Did they ever say they were bound for Flanders, till after they were taken?

Fisher. No.

Serj. Tremain. What manner of place was this that they hid in?

Fisher. An ugly hole, where a man has no room to lie along at ease; he can neither stand upright, nor sit upright.

Serj. Tremain. Did you see the waterman that brought them on board?—Fisher. No.

Serj. Tremain. Was there any waterman's coat left?—Fisher. Yes, there was two.

L. C. J. Holt. But didst thou see the boat?

Fisher. We were asleep when they came on board, and the boat was put off as soon as ever they came on board.

Serj. Tremain. Then as soon as ever they were on board, you got up the anchor and pulled in the pendant?

Fisher. Yes. We immediately hove up the anchor, and took in the pendant.

Serj. Tremain. Did any sculler hail you afterwards, as you were going down?

Fisher. Yes, as we were going down there did.

Serj. Tremain. What did you say to him?

Fisher. I was not steering then; but this other man made answer.

L. C. J. Holt. Mr. Ashton, will you ask him any thing?

Ashton. When I gave you the half-crown that you speak of, what did I say to you?

Fisher. You bid me, when I came to be examined, say we were going to Flanders, and not to France.

Ashton. What did I say else?

Fisher. You bid me take that half-crown for

to night, to help to bear my charges, and to-morrow you would take farther care of us.

Ashton. I told you, you were prisoners now, and I gave you that, and told you I would take farther care of you.

Fisher. You did not say we were prisoners, but you said you gave me that to help to bear charges for that night, and on the morrow you would take farther care of us.

Serj. Thompson. Then set up James Amonds.

Sir W. Williams. Are you sworn, friend?

Amonds. Yes, Sir.

Sir W. Williams. Then let the court and the jury know what you can say in this matter.

Amonds. My lord, they came on board about 11 or 12 o'clock at night; I was asleep in the cabin, and heard a boat coming aboard, and I turned out, and before I could get out of the cabin, they were got aboard, and I see no boat, nor nothing. So says the master, go forward and heave up the anchor, and after we had heaved up the anchor, I goes into the ship to tow the vessel down, because there was no wind, and we would not let the vessel go foul on the ships that were in the river, and a little after we came on board again; and when I came on board again, they were all on board, all four. After that comes a waterman, and I was at the helm steering, and he called out to us, Oh hoe! says he; did not I bring a parcel of gentlemen on board this smack? Not as I know of, said I. Says he, I carried a parcel of gentlemen on board some smack that had a pendant out, and I know not where it is; they carried my cloaths on board with them. Said I, I know nothing of it, nor I did not; for I saw neither waterman nor boat; so away the waterman goes, and we went down the river, and when we came to Halfway-tree, we came to anchor, and my master went and laid himself down, the tide being almost done, and there being no wind, and Mr. Ashton and they lay in the cabin: and says Mr. Ashton to me, take care of us now, and we will take care of you hereafter; says he, we shall help you to many a freight, and many a pound. Ay, ay, said I, you will be taken care of to be sure at day-break, or when the day comes on. About 8 o'clock, we hove up the anchor again, and fell down as low as Long Reach, where the George frigate lay; and when we came there, they went down to hide in the quarter hatches. I steered it down still; and when we were got past that man of war, the hatches were taken up, and they came up again out of the quarters, and sat in the cabin again, and we had a fresh gale of wind, and run down to Gravesend quickly, and when we came near the block-houses, said I, we are almost at the block-houses; then said they, we will go down and hide a little; and so they did till they were past there, then resolving to go to dinner.

L. C. J. Holt. What time a day was this?

Amonds. About 11 o'clock, as near as I can guess.

Sol. Gen. Well, they did go down to hide then, did they?

Amonds. Yes, they did go down and hide, and came up again, I am sure some of them; I heard some of them in the cabbin.

Sol. Gen. Well, what followed?

Amonds. After they were gotten up, and past Gravesend, this man was sent for victuals for them, and so he fetched them some roast beef, and some other things; and just as the roast beef was going into the cabbin, said I, here comes a barge off to press. So when I cried, the barge was a-coming, they took the victuals down into the quarters, and there lay they, and the victuals a-top of them. And when the barge came near us, the captain waved his hat to command us to lie by. Said I, 'We must lie by, for the barge is coming up to us.' And we clapped the helm-a-lee, and lay by; and after we were laid by, the barge came on board us. Says the captain of the barge, 'You have got a couple of likely good men, master,' said he. 'Ay, says the master, but I hope you won't press them.' Says the captain, 'Have you got any thing to keep you clear?' 'Yes, if it please you, noble captain; I have got a protection.' 'I am sorry for that,' says he, and comes on board, for he staid all this time in the barge; and smiling upon him, he comes on board, and says he, 'Come, let us see your protection.' And the master shewed it him and he read it. Says the captain, 'I must look a little farther.' And he goes into the cabbin, and took up the hatches, and there lay all these gentlemen. They were something longer in coming up than he would have them; so says the captain to his men in the barge, 'Come on board, and see who is here.' And so some of his men did come on board; and, to the best of my remembrance, my lord was the first man that came up: and when my lord came up, the captain run his hands into his coat pockets, to feel for papers, as I suppose; and my lord desired the captain to be kind, and take nothing away. Says he, 'I'll take nothing but papers; it is papers I look for:' and he pulled out a watch, and gave him again. After that Elliot came out; and whether he found any thing upon Mr. Elliot or no, I cannot tell. Mr. Ashton was the last that came up; and when he came up, a waterman of the captain's calls to him, and says, 'That gentleman that came up last has put something into his bosom, but what I can't tell.' So the captain took Mr. Ashton by the arm, and turned him about, and says he, 'What did you put in your bosom?' Says Mr. Ashton, 'Nothing but my handkerchief;' and pulled out his handkerchief, and shewed him. Then the captain put his hand in, and pulled out papers, with a piece of lead tied to them. And that is all that I saw.

Serj. Tremain. But tell us what happened afterwards?

Amonds. When that was done, the captain commanded us all into his barge; and I rowed, and some of the rest rowed, it being cold weather, till we came up to London. After we

came up to London, they did not say any thing to me, because I was a-rowing till then. It seems they did give them some money, but they gave me none, not till I came into Whitehall; and then my lord's man came to me, and called me a one side: says he, 'Here's half-a-crown, will serve you to night; and be sure, when you come to be examined, that you say you were bound for Flanders, and not for France, and you will be taken farther care of to-morrow.'

Serj. Tremain. What manner of place is that quarter-hatches?

Amonds. They could neither sit, nor stand upright in it.

Serj. Thompson. What did they lie upon?

Amonds. There were three or four slit deals that were laid over the ballast, but it seems they had shuffled them on one side when they were taken, for the ballast lay open.

Serj. Tremain. Did the waterman that brought these men on board you leave his coat there?

Amonds. I did not see the boat, nor the waterman; and therefore I am not able to say any thing about it.

Sol. Gen. How came the pendant to be taken down?

Amonds. I can't tell that; I was in the skiff when it was taken down.

Juryman. My lord, I do not well understand how the papers came to be taken away from Mr. Ashton.

L. C. J. Holt. He tells you, Mr. Ashton was seen to put his hand with something into his bosom; and being taxed with it, he said it was his handkerchief; and the captain put in his hand, and pulled out a bundle of papers.

Juryman. Did he see Ashton take away the papers from any other place?

Amonds. No, an't please your honour, I did not see them till they were taken out of his bosom.

L. C. J. Holt. Did you see captain Billop take the papers from out Mr. Ashton's coat?

Amonds. Yes, I did.

L. C. J. Holt. Where were they before they spied the barge a-coming?

Amonds. If it please your honour, I heard them talk; I thought they had been up, but it seems there was but one of them up when they said, the barge was coming aboard: I was at the helm, and heard them talk.

L. C. J. Holt. Then you knew nothing of these papers, but when you saw them taken out of Ashton's bosom?—*Amonds.* No, my lord.

Sir W. Williams. If you will ask him any thing, Mr. Ashton, now you may.

Ashton. Pray, friend, had not I been up first, and searched before the papers were taken?

Amonds. Not as I know of.

Ashton. Did not I go down into the hold to take my hat, and call to you, and desired that I might go down for my hat?

Amonds. I cannot tell; for when I saw the papers taken from you, I was in the stern; I was not down.

Ashton. Had not I been searched first?

Amonds. Not that I know of, till you were in the stern.

Serj. Thompson. Then swear captain Billop. Which was done, he standing up by the Sheriff.

Serj. Tremain. Captain, I suppose you may be heard from that place.

Ashton. My lord, I desire the witness may come down, else I shall not be able to distinguish what he says: It is the proper place for him I think.

L. C. J. Holt. Let him come down.

Ashton. I humbly desire, my lord, that the witnesses may all be obliged to stay in court.

L. C. J. Holt. Let them all stay.

Sir W. Williams. You are sworn, Sir: Are you not?

Captain Billop. Yes, I am.

Sir W. Williams. Then, pray, will you give an account where you took these persons, how you took them, what you found, and how you disposed of it?

Billop. Must I begin from the beginning?

Sir W. Williams. Yes; Tell your whole knowledge, in order of time, as it fell out.

Billop. What, from the time I went out?

Serj. Thompson. Make it as short as you can.

Sir W. Williams. Yes, you must tell all; for you speak now to a new jury, and here is another prisoner at the bar to be tried.

Billop. The last of December, about two a-clock, or between one and two, my lord of Danby came to me at one of the doors of the House of Lords, and told me, his father must speak with me; and he carried me up to my lord Lindsey's chamber; and in a little time my lord president came there, and told me, he heard there were divers persons that had papers of dangerous consequence, and were going to France, and desired me to use my skill for my seizing and securing of the papers. I began then to talk of what was proper for such an undertaking; and I told my lord, I thought the best way was to go to Woolwich or Deptford, and to take a man of war's pinnace with us: upon that, my lord of Danby being by, said, he knew of a boat that he could have, which was my lord duke of Grafton's; and my lady duchess had lent it him, and he would go and get it ready: upon this my lord president said, he would give me a note of the name of the vessel, and where she went out; and likewise a letter to another person, that would instruct me farther, and shew me the vessel: accordingly my lord president gave me the letter, and I went away to look for the person, but could not find him. My lord Danby came to Tower-Wharf himself with the boat; and I left a man there to bring me word when the boat came up at the place where I was; and captain Stringer and sir Thomas Taylor came there to me. After my lord of Danby had told me what I had in the boat, I told him, I thought there were not arms enough; and therefore it were best to go to the Tower, to borrow some arms from thence:

when we came to the Tower, my lord Lucas was not come in; and when I had staid a little time, he did come in: and when I had acquainted him with my business, he sent for an officer of the guard, and there we borrowed some arms, a blunderbuss of his, and a carbine, and the like; and about eleven a-clock, or somewhat past, we put off from Tower-Wharf. It was calm, and we rowed down towards Gravesend; and we went aboard a vessel or two; but I was not willing to lose much time, because I was resolved to take them before they were gotten too far: so we rowed away for Gravesend, where I refreshed my men, and afterwards went down into the Hope; and I did judge that no vessel that came from London that tide could be a-head of me. I went on board several vessels that lay in the river, in order unto the pressing of men; and I went on board all sorts of vessels, because I would give no suspicion of what I was about; and having been on board of several, I pressed two or three Barkin men; and one particularly, that knew all the vessels upon the river; and I made him to row very near to me, that I might talk to him; I had got the names of a great many smacks, and gave it out, that I would press a smack to carry for a tender to my ship, when the fleet went out; and naming this smack that I was to go to search, I told him, 'I heard such a smack sailed well, and I had thoughts of pressing her:' he told me, 'She was old:' but said I, 'She will serve a summer well enough; and that is it I intend to press, if I can find her.' Says he, 'I'll shew you her, I know her when I see her.' So we went on board several vessels as we went along. And as we were rowing along, before we came to the Nest point by Tilbury-Fort, we saw several smacks coming down the river; and when we came about the point, the headmost smack of all, the fellow looked out, and said, 'Yonder is the Thomas and Elizabeth.' Then I called to one of my men to wave, and bring them to lie by; which they did, and they lay by till I came on board. When I came on board, I saw two lusty men stand by the master; said I, 'Master, you have got two good lusty fellows that would serve the king; but I'll be kind and civil to you, I'll take but one.' Says the master, 'I hope not so, for I have a protection.' With that, I came on board, and took his protection in my hand, and read it. As soon as I had read it, I asked him, if he had no more men upon deck than what I saw? He said, 'No.' Then, said I, 'I must look a little farther.' And I went into the quarters, and took up the scuttle, and the hatches, and I saw some gentlemen lie. 'Oh,' said I, 'what a pretty posture is this! where are we a-going? gentlemen, you must turn out.' The first that came to hand was my lord Preston; but I did not know him then, nor some time after I was in the boat with him: So I took hold of him, and helped him up; and when he was up, said I, 'Sir, I must search you.' Says he, 'I hope you will take nothing from me.

‘Nothing,’ said I, ‘but papers.’ So I searched all his pockets; and as I found any papers, I put them into my own coat-pocket. And I took his watch, and pulled it out, and gave it him again: after that I had searched him, came up Mr. Elliot the first man, and the next was Mr. Ashton, who crowded up while Elliot came up, in his night-cap. I think, Mr. Ashton, you had your night-cap on. So Mr. Ashton goes down again, and puts on a perriwig, I think; but coming up again, one of my seamen sees him take something, and put it into his bosom: he follows Mr. Ashton quick, and pulls me by the coat: and, says he, ‘That gentleman has got something in his bosom.’ So I took hold of him, and turned him round: Said I, Mr. Ashton, what have you got in your bosom? Nothing, says he, but a handkerchief; and immediately he put his hand into his bosom, and plucked out the handkerchief, and shewed me. As soon as he had pulled out the handkerchief, I put my hand into his bosom, and there I met with the packet that had the lead affixed to it; and pulling it out, I clapped it into my own pocket; for I thought that was the matter of moment that I was to secure. So I ordered them to go into the boat, and the master of the vessel to let go his anchor: and two men I left in the vessel, whom I ordered to search, and to secure what they found till farther order; and I left two musquets with them. And after we were in the boat, they desired to have something handed in, which I gave order for, a hamper, and a night bag; and away we put off from the vessel, and rowed up; it was against tide, and very cold weather. In a little time Mr. Elliot called one of the gentlemen my lord; then I whispered him, and asked him who that lord was; and he told me, it was my lord Preston. Then I saluted my lord; and my lord was pleased to say, he was very well satisfied they were fallen into the hands of a civil gentleman. So rowing up against tide, and it being a westerly wind, which blowed very fresh, my lord desired that I would let them stop at Gravesend, till the tide turned, that they might refresh themselves. I begged his pardon, and said, there was a ship in Long-Reach, the George frigate, and we would stop there; and I did not doubt but I could command the great cabin for his accommodation; and there he might have any thing that he wanted. My lord seemed contented with it: but before we came on board the man of war, there happened a great deal of discourse betwixt us of several things.

Sir W. Williams. Pray repeat it, as well as you can remember; what discourse happened?

Billop. Truly, my lord Preston being cold, and the hamper standing by, says he, captain Billop, we have not eaten, we will eat, if you will. And there was a piece of beef at the top of the hamper, and bottles of wine; and I opened the hamper, sitting fairest for it, and handed out the beef, the bread, and the bottles; and after we had eaten what we would, my lord

ordered the rest to be given to the men that were the boat’s crew; and after we had done this, and taken out a bottle or two, and shut up the hamper again, my lord Preston drank to me once or twice, and seemed very well satisfied and pleased with his usage. He told me, he was sensible of my civilities; and if ever it lay in his power, he would not forget me. So we drank again, and talked again; but before we came to the ship, my lord Preston told me, that if ever it lay in his power, he would be sure to make an acknowledgment of the civility I had shewed him. And, to the best of my memory, he had this expression, ‘If there ever was any thing he could serve me in, he would do it with all his heart, if I would but dispose of the packet.’

Serj. Thompson. What would Mr. Ashton have had you done? What did he say to you?

Billop. Mr. Ashton said, it would do me no good to injure so many gentlemen; and desired me that I would throw the packet overboard.

Serj. Tremain. What did he mean by so many gentlemen?

Billop. My lord, I cannot tell; but that was his expression.

Serj. Tremain. Who desired you to throw the packet over-board?

Billop. Mr. Ashton did several times.

Serj. Tremain. What did he say to you? What arguments did he use?

Billop. My lord, it was so many times over, and so much mixture of discourse we had, that I am not able to tell the particulars.

L. C. J. Holt. But what arguments did he use?

Billop. I do not know that he used any more great arguments, more than what I have told you already.

L. C. J. Holt. Say that again that you said before.

Billop. He said, it would do me no good to injure so many gentlemen. Prithee, captain Billop, says he, throw it overboard.

Serj. Tremain. What did he say farther?

Billop. I will tell you, if you will give me leave. Mr. Ashton did say, a little after this, with a great deal of insinuation, ‘Captain Billop, what if you should turn about, and go along with us?’ ‘No, Mr. Ashton,’ said I, ‘that I cannot do.’ Says Mr. Elliot, ‘Prithee, throw the packet overboard.’ This they did as we came up the river; and it is the most that I can remember, till we came on board the George; and when we came on board the George, Elliot called me into the steerage, and desired me, of all love, that I would dispose of the packet: and he said, that now I had an opportunity to make myself as rich, and as great as I would, and nobody could see it, if I did throw it away. While I was in the ship, Mr. Ashton, my lord, and Mr. Elliot were with me in the steerage. Said I, ‘I shall be taken notice of to be whispering; pray forbear.’ Ashton then spoke to me again, to desire me to throw the packet overboard. By this time the victuals was handed in, and there we eat and drank, and

my lord smoaked a pipe of tobacco before the tide turned; and when the tide made, we went into the boat again, and rowed up towards London, and they were using these sorts of arguments over and over again. And once Mr. Elliot, I think it was, to the best of my remembrance, told me, 'Now you have it in your power to make your fortune, and may be as great a man, and as rich a man as you can desire.' And Mr. Ashton said some words something to the same purpose: 'Prithee,' said he, 'throw it overboard: what good will it do you?' So I refusing it, as I did many times, Mr. Elliot told me, that I might take the letters that were taken, in my lord Preston's pocket, and tie the lead to them, and throw the packet overboard. 'No,' said I, 'Mr. Elliot; sure you would take the king's counsel to be a very odd sort of men, that they cannot find out such a thing as this.' 'Prithee, dear Billop,' said he, 'throw it overboard;' many times whispering me in the ear; and so did Mr. Ashton many times, saying, 'You may do us a great kindness in it.' And we drank, and had several intermissions; and they at me again, and I denied them, and they desisted; and then they at it again: and Mr. Elliot then told me, 'Prithee, dear Billop, throw it over-board.' Said I, 'Mr. Elliot, if I should be so great a villain to do such a thing, if ever it was your day, would you trust me again? Put it to be your own case.' Says he, 'You have gentlemen to deal withal.' 'But,' said I, 'I will never put it into your power.' Mr. Elliot seemed to be angry at this, and said, 'Every dog had his day.' Said I, 'I hope never to see it your day: but I pray forbear this discourse; let me beg that of you; for I do not desire to be provoked to use you otherwise than as gentlemen.' And after that, they never urged me more to throw the packet over-board: but Mr. Elliot was angry, and very much disturbed, and wished a thunder-bolt might strike the boat and sink it. So I brought them up, through London-bridge, and they said no more about the packet: but Elliot wished, that London-bridge might have fallen on our heads. At length I brought them to Whitehall; and I put my man ashore at Hungerford stairs, that he might get before, and give the porter notice at Whitehall-bridge, that he might open the gate. I brought my lord Preston and the rest to the bridge; and while I was arming my men, to guard them up to my lord Nottingham's office, I suppose they then took the opportunity to give the men money, getting near to them; I know nothing of that: but I carried them up to my lord Nottingham's, and there I delivered them and the packet to my lord. After some time, the packet lay upon the table, and my lord Nottingham sends me for my lord Preston. When my lord Preston came in, I withdrew without bidding, and the packet lay upon the table unopened: and when my lord Preston came out, I went in myself, and the packet lay in the same place and posture, and not opened. And I

stayed while Mr. Ashton was called in, and my lord Nottingham asked him a great many questions.

Ashton. Pray repeat those questions, captain Billop; and what answers I made.

Billop. Truly, my memory does not serve me to remember all of them, and I was in a very uneasy condition at that time, and would much rather have been in my bed, than any where else: for the night before I went down, I had a plaister of Spanish flies put to my back, and they had raised a great blister, and it had not been dressed so long, that the napkin that was applied stuck so to it, that the flesh was jagged, and I was in a great deal of pain, so that I did not mind so much as I should have have done at another time, what was said.

Ashton. But pray, captain, remember as much as you can what passed.

Billop. But I will tell you what I remember, I remember my lord Nottingham asked, who I took the packet from? And you owned, I took it from you.

Sir W. Will. Pray, Mr. Ashton, give us leave to have done with him, and then you shall ask him what you please. Pray go on, captain Billop.

Billop. Then my lord Nottingham sent for Mr. Elliot in, and asked him whither he was going? And he said for Flanders. My lord asked him, what he was going there for? He said, he was going to seek his bread; he was turned out of all at home, and he had rather go abroad to seek his bread, than stay at home to starve.

Serj. Tremain. Was this the lead that you took fixed to the packet?

Billop. Yes, Sir; that is the lead.

Serj. Tremain. Did you take that lead, with the packet, out of Mr. Ashton's bosom?

Billop. This was tied fast to the packet that was taken out of Mr. Ashton's bosom. These honest men saw me take it.

Sir W. Will. Now, if you have a mind to ask him any questions, you may.

Ashton. Pray, captain Billop, did not you search me before you took the packet upon me?

Billop. No, not that I remember.

Ashton. Had not you taken some other papers from me before?

Billop. No, Sir; I took none from you but the packet.

Ashton. Pray recollect yourself, for perhaps my life may turn upon it: You are as much a witness for me, as for the king; you are to swear the truth, and the whole truth.

Billop. And I will do you all the justice I can, I will assure you.

L. C. J. Holt. Answer his question, captain Billop.

Ashton. Was not I the first man that spoke to you after we came up?

Billop. No, Mr. Elliot was the first man that spoke to me, that I knew.

Ashton. Did not I ask you to give me leave to go down for my hat?

Billop. Truly, I do not remember that.

Ashton. Did not you reply, That the man should go down and fetch my hat?

Billop. It is likely I might, but I do not remember it.

Ashton. Had not you searched me then, and taken my papers from me?

Billop. No, Mr. Ashton; for upon the oath that I have taken, I took no papers that I remember, but the papers that I took out of my lord Preston's pocket, and the packet that I took out of your bosom; for my lord Nottingham asked me, if that packet was all the letters I took? I told him, no; and shewed him the papers I took out of my lord Preston's pocket, and they proved to be of no consequence, and my lord Nottingham gave them me again, and I carried them to my lord Preston.

Ashton. Did I not go down into the hole for my hat?

Billop. I believe you might.

Ashton. And was it not after that, that you took the papers out of my breast?

Billop. Yes, I believe it was.

Ashton. Where is your man that called to you, and said, I put something in my breast?

Billop. Here he is by me, if you would ask him any thing?

Ashton. You say, I spoke to you about disposing of these papers; pray, from the time that we came into your boat, before we came on board the George man of war, did I speak to you?

Billop. Yes, of the packet you did: You said, 'What good would it do me to injure so many gentlemen?'

Ashton. There passed no more than general discourse before we came on board.

Billop. Yes, Mr. Ashton, I will tell you another thing you put me in mind of. When you saw that, though you were so eager with me, nothing would prevail, you said, 'I know Capt. Billop, and have known him many years; and nothing will prevail on him, if he have no mind to it; And I know, if he will serve us, he will serve us generously, and like a gentleman.'

Sir W. Wil. Speak that again.

Billop. He said, 'I know capt. Billop; if he will serve us, he will do it generously, and like a gentleman.'

L. C. J. Holt. Who said so?

Billop. Mr. Ashton.

Ashton. Did I speak to you to dispose of the papers after we came from on board the ship? I suppose you remember it was cold, and the tilt was called for, to be laid over us, and I fell asleep; and you know I never waked, nor spoke, till I came to London-Bridge.

Billop. Yes, yes; we had the tilt over us.

L. C. J. Holt. Pray speak your questions out, that we may hear them, Mr. Ashton.

Billop. Mr. Ashton did go to sleep a while; but he had many times urged me, and spoke to me to throw the papers over board.

L. C. J. Holt. Who was it that told you 'every dog had his day?'

Billop. That was Elliot.

Sir W. Wil. Was there any discourse about turning of the tide?

Billop. Mr. Elliot said, 'You have now an opportunity to make your own fortune, and you may be as great, and as rich as you please; for it is impossible the tide can run long this way.'

Serj. Tremain. Did Mr. Ashton say any thing about going along with them?

Billop. Yes: You may remember, Mr. Ashton, that you said, 'Come, go along with us, you may do as well there, or better than you do here.'

Serj. Tremain. Did he tell you where you were to go with them?

Billop. No, Sir; nor I did not ask him the question.

Ashton. Pray, when did you give my lord Nottingham these papers?

Billop. Do you mean that bundle that I took out of your bosom?—*Ashton.* Yes.

Billop. As soon as ever I followed my lord Nottingham into his room, I pulled them out and gave them him.

Ashton. Did not you go out of my lord Nottingham's room, and give my lord Nottingham some loose papers?—*Billop.* Yes.

Ashton. After this, was not my lord Preston called in to be examined?—*Billop.* Yes.

Ashton. How long was my lord Preston in the room while you were out?

Billop. I cannot tell very well.

Ashton. Pray, Sir, answer that question.

Billop. I believe it might be half a quarter of an hour. I do not think it was much more.

Ashton. I believe you must remember some sort of discourse that was betwixt you and captain Elliot, even to a quarrel almost. And did you not speak to my lord Nottingham's servants, to fetch your hat out of my lord Nottingham's room?

Billop. Yes, I do remember that.

Ashton. This must be a good considerable time: it was all the time that my lord Preston was within with my lord Nottingham, that you were out?

Billop. Yes, it was.

Ashton. And all that while was not the bundle of papers out of your sight?

Billop. It lay upon the table.

Ashton. Pray, answer my question? was it not out of your sight?

Billop. Yes, it was.

L. C. J. Holt. Yes, yes; it must be, for he was out of the room.

Serj. Tremain. When you came into the room, did you find the papers in the same condition?

Billop. Yes, they were un-opened, except that my lord had taken off the lead, and a little paper fell loose from the rest.

Ashton. Pray, take notice of that, gentlemen.

L. C. J. Holt. But pray don't infer more from thence than it will bear.

Ashton. It seems some of the papers were taken out.

L. C. J. Holt. He does not say any such thing, that some of the papers were taken out.

Ashton. He says, something was cut, and some papers fell out.

Billop. There was a little paper or two tied to the great packet.

L. C. J. Holt. What became of them?

Billop. They were cut loose, but not opened.

Ashton. How can you tell they were not opened?

Billop. Because I stood by when they were cut.

Ashton. But how can you tell that; for you see the little papers taken, and they were loose from the others?

Billop. They were taken from the great bundle before I went out.

Ashton. Had not my lord opened those papers before you came in?—*Billop.* No.

Ashton. How can you tell that?

Billop. I tell you, as near as I can judge, they lay in the same posture that I left them in.

Ashton. Was the packet sealed when you took it?

Billop. No: but it was tied. There were several letters in it that were sealed; it was tied up very hard.

Ashton. I do not question but my lord Nottingham will do me the justice to say how long he was in the room.

L. C. J. Holt. You must not comment, nor make your observations till your proper time.

Juryman. Pray, my lord, I desire he may be asked, who was with my lord Nottingham when my lord Preston was there?

Billop. There was nobody else then.

Juryman. Then 'tis not probable they were altered before captain Billop came in.

Ashton. But I hope probabilities shall not be evidence to condemn any man.

Juryman. Those two little papers you speak of, were they severed from the packet?

Billop. I cannot tell whether they were or no; they seemed loose upon untying the bundle.

L. C. J. Holt. Were they cut in your presence?

Billop. Indeed, my lord, I cannot say that I did see them cut.

Ashton. Pray take notice of that, gentlemen of the jury.

L. C. J. Holt. They are twelve honest gentlemen, they will do you right.

L. C. J. Pollexfen. Observe what the witness says; he says, That he does not remember that they were cut in his presence, but he does not say they were not.

Ashton. If he does not swear they were, it is reasonable to conclude they were not cut in his presence.

L. C. J. Holt. He says, the great packet was not opened, the two little papers were loose from the rest of the great bundle.

Billop. There might be two or three of them, less or more, I cannot tell.

Serj. Thompson. You will be farther satisfied in this matter upon my lord Nottingham's evidence, I suppose.

Serj. Tremain. We have done with capt. Billop for the present. Pray call Johnson. [Who was sworn.]

Sir W. Wil. Were you at the taking of that gentleman, and the other in the smack?

Johnson. Yes, I was.

Sir W. Wil. Then pray give an account of the matter how it was?

Johnson. We went down in a pleasure boat, and went to the Tower, we set through bridge against tide, my lord of Danby was with us; and when we came to Tower wharf, there they went to the Tower for arms, and we stayed till ebbing water, and rowed to Gravesend; and when we came to Gravesend, we went on board several ships, and I thought we were going a pressing; and we stayed at Gravesend the time of the writing of a letter, and then we went both into the boat again, and rowed after a smack that had gained of us; but that not being the smack, we turned back again, and then it was high water: and when we came to the upper end of the Hope we saw several smacks coming, and there was a fisherman on board that said, That was the smack the captain enquired after, that was coming down there; and when they came on board, the captain said, there were two or three brave men, and he hoped he could spare one of them: and the master said, he hoped he would take none of them, because they had a protection, which he shewed to the captain. Then the captain went in and bid me take some small arms, and go on board with him, and told the master he must look a little further; and the boards were taken up, and I saw a great piece of roast beef, and under that, my lord Preston, and Mr. Elliot, and this gentleman, Mr. Ashton: my lord Preston came up first, and Mr. Elliot next to him; and I see this gentleman take up something and put it into his bosom, and I told the captain of it, and he asked him what it was, and he said, nothing but his handkerchief, and plucked out the handkerchief; but the captain put his hand into his bosom, and pulled out something else.

L. C. J. Holt. What was it?

Johnson. It was a parcel of papers tied up, with a piece of lead tied to it, for I came up close after him, and see him take it up.

Sir W. Williams. What else were there found with the papers? was not there some seals?

Johnson. That was afterwards; but when the captain asked him what he had gotten in his bosom, he pulled out his handkerchief, and said, Nothing but his handkerchief; but the captain took the other papers out of his bosom, and so I went down, and there were the two seals, and I took them up; and when I came up, Elliot had a pair of black whiskers on, and he borrowed a pair of scissars and cut them off, and said, he should remember me again if ever he lived, he should know me by my tooth be-

ing out. And coming up into Long Reach, Elliot was a cold, and got to the oar and rowed, and said, You row as if you were rowing to prison; and he wished that a thunderbolt might drop into the boat, and that London Bridge might drop down upon his head. And when we came up to Whitehall, I stood a guard over them.

Juryman. Did you see captain Billop take the packet of letters from that gentleman's breast?—*Johnson.* Yes, I did.

Juryman. Did you belong to captain Billop?

Johnson. Yes, I was one of the boat's crew.

Ashton. Had not I been up and searched before?

Johnson. Yes, I think you had been up before.

Ashton. And then you saw me take up the packet off from the ballast?

Johnson. Yes, I saw you take it out of the ballast and put it into your bosom.

Ashton. Gentlemen, I hope you will be pleased to take notice of that.

L. C. J. Holt. No doubt of it they will.

Ashton. Did not that bundle of papers that was taken out of my breast, did not they lie near to the place where the seals lay?

Johnson. Yes, it lay just by them.

Serj. Thompson. Pray set up captain Billop again. [Which was done.] When you brought these papers to Whitehall, captain Billop, who did you deliver them to?

Billop. To my lord Nottingham.

Serj. Thompson. After he received them, what did he with them?

Billop. After he had examined all these gentlemen, he went to opening of the papers, and he desired me to stay in the room till they were opened, which I did; and my lord looking on some of the papers, said, If this packet had gone, we had quickly been visited by the French. With that I took them up, and looked into them. My lord said, I might look into as many papers as I pleased; but I was very uneasy, and full of pain, and had more mind to be gone, and be a-bed, than looking into papers; but several of the papers I did look into, and several I put my mark upon; and the next day at the council, what of them I did know, I did put my mark upon.

Serj. Thompson. After my lord Nottingham had perused them, what did he do with them?

Billop. My lord put them up in a cover, and tied them with a piece of twine, and put his seal upon them, and gave them me, and desired me to carry them to my Lord President; which I immediately did; and, without stopping, carried them to my Lord President.

Ashton. When was this, Sir? Was it that very night that we were brought to Whitehall?

Billop. Yes.

Serj. Tremain. Then we must desire my lord Nottingham to be sworn.

The Earl of Nottingham sworn.

Serj. Thompson. Will your lordship please to give the court an account how these papers

came to your lordship, and how your lordship disposed of them?

E. of Nottingham. Captain Billop came to my office—

Ashton. I humbly desire your lordship would please to speak louder; for I cannot hear your lordship, and I fear the jury cannot.

E. of Nott. I speak as loud as ever I can, but I have a great cold.

L. C. J. Holt. You may hear my lord very well, if the court be but silent.

E. of Nott. Captain Billop brought to me a packet tied about with a packthread, to which there was a piece of a leaden pipe fixed, in which packet there was stuck in another paper; I think there was but that one besides the cover, but what it was particularly I do not remember: this packet was laid upon the table while he was by; and I called in my lord Preston, not being willing to make him stay, and after I had some discourse with my lord, to examine him what account he could give of these proceedings: then I called in yourself, Mr. Ashton, and captain Billop was by also, but the packet so tied with the packthread, I cut open in Billop's presence with a pair of scissars; the same papers that were in that packet, together with the little paper that was stuck in, I tied up; I am sure I sealed them in a sheet of paper, and gave them back again to captain Billop to carry them to my Lord President.

Sir W. Williams. Captain Billop, you have already declared, that all you received from my lord Nottingham you carried to my Lord President.

Billop. All the papers that I received from my lord Nottingham, just as I received them, sealed with my lord's seal, I went directly to my Lord President's, and gave them him.

Sir W. Williams. Pray, my lord, did your lordship deliver to captain Billop all the papers that you received from him?

E. of Nott. My lord, all the papers that captain Billop brought to me, that were in the packet (for he brought some letters that he took out of my lord Preston's pocket, that were of no consequence), but all the papers that were in the packet, I delivered back to captain Billop, sealed as I received from him, and no more, and no others; for the other letters, they being from my lord Preston's children, and not relating to the public, I gave them to him to give my lord Preston again.

Ashton. My lord, I humbly beseech your lordship to tell the court how long my lord Preston was with your lordship in the room?

E. of Nott. Truly I am not able to tell you particularly how long it was, I believe it might be about a quarter of an hour, or scarce so much.

Juryman. Was there nobody with your lordship, when captain Billop was out, but only my lord Preston?

E. of Nott. No, not that I know of.

Ashton. My lord, I have one favour more to beg your lordship, I humbly pray your lordship will please to tell the court and jury what

answer I gave to your lordship, when you asked me how I came by those papers?

E. of Nott. As near as I remember, the account that you gave of them was, That you went down again after you were come up, as you said, to fetch your hat; and that when you did go down into the little hole to fetch your hat, you brought these papers with you.

Ashton. My lord, this was the account I did give. Now this very well corresponds with that man's evidence, that says he saw me take up the papers and put them into my breast.

L. C. J. Holt. He does say so, and this does all very well agree.

Sol. Gen. Now we desire my Lord President would be pleased to be sworn.

The Lord President sworn.

Serj. Thompson. Pray, my lord, will your lordship please to declare to the court what papers captain Billop brought to your lordship, and how your lordship disposed of them?

L. President. Captain Billop did bring me a packet tied with a packthread, and that was sealed with my lord Nottingham's seal, I knew it to be his seal; and he told me, that my lord Nottingham commanded him to bring the packet to me. I opened the packet, and perused all the papers; it was very late, and I locked them up till morning, and I then carried those very papers to the king, and in the king's closet, at Kensington, the king read some of them, and in my sight, for I never parted from the king, but was by all the while: the king put up all the papers again, and commanded me to call a cabinet council, and to let them be delivered there to the council; accordingly I did deliver them paper by paper, and they were all marked there by my lord Sydney, who is here present; and they were then delivered into the hands of my lord Sydney.

L. C. J. Pollexfen. Will you please to ask my lord any questions, Mr. Ashton?

Ashton. My lord, if your lordship will be pleased to pardon me, I would ask your lordship, did any of your lordship's servants or family, read any of these letters?

L. President. No, not one.

Ashton. Were they locked up where any of your lordship's secretaries or servants could come to them?

L. President. No, I locked them up in a strong box in my closet.

Ashton. My lord, I only desire this favour further of your lordship: your lordship, at the committee of the council, was pleased to ask me, how I came by those papers; I presume you may remember, and I pray your lordship to declare, what answer I gave.

L. President. Truly, Mr. Ashton, to tell you truth, I do not remember the particulars; I remember you denied every thing; I can only say that, in the general; but what you said in particular I cannot remember.

L. C. J. Pollexfen. Do you put my lord in mind if you can; see whether he does remember it.

Ashton. My lord, I only desire to ask my Lord President, whether I did not tell him I went down, after I had been searched, into the hold, and there I see the papers lie, and brought them up, and put them into my breast; they were no sooner in my hands but captain Billop had them in his; for the man called and said, This gentleman has something in his breast, and the captain put in his hand and pulled it out.

L. President. Truly, Mr. Ashton, I do not remember the words that you used, but remember you said something to which I made answer, What makes it matter, they were found upon you, and taken out of your bosom, do you look to it how you came by them. I do not remember what you said, for I cannot remember particular words, but I believe you might say some such thing.

Sol. Gen. Then, pray, my lord Sydney, will you be pleased to be sworn?

The Lord Sydney sworn.

Sol. Gen. Will your lordship be pleased to declare what papers you received from my lord president?

L. Sydney. At the cabinet council my lord president delivered a packet of papers, I received them every one there, and marked them, and put them into my pocket.

Serj. Tremain. Did your lordship deliver them to any person afterwards?

L. Sydney. The next day, or the day after, I gave them to Mr. Bridgman to copy out, and he delivered them back to me again.

Sol. Gen. Pray, my lord, give me leave to ask this question—

Serj. Thompson. Your lordship had marked them before you delivered them to Mr. Bridgman to copy?

L. Sydney. Yes, I marked them at the council table, at my lord Nottingham's office.

Sol. Gen. My lord, those papers that you marked, were the same papers that my lord president brought, and delivered in at the council?

L. Sydney. Yes, the very same.

Juryman. My lord, shall we have leave to ask my lord Sydney a question?

L. C. J. Holt. Ay; what is it?

Juryman. Pray, my lord, did the packet come to you sealed? That which was taken from this gentleman, was it sealed when it came to you?

Sol. Gen. No, it had been opened by my lord Nottingham, and my lord president.

L. C. J. Holt. Sir, you are under a misapprehension of the matter. My lord Nottingham, after he had opened them, sealed them up again, and delivered them to captain Billop; captain Billop carried them sealed to my lord president; my lord president opens them, and lays them up; they were never out of his possession; he carries them to the king; the king read some of them in his lordship's presence; he delivers them at the cabinet council to my lord Sydney; and my lord Sydney swears he

read them there, marked them, and when he had done, put them in his pocket.

Sol. Gen. My lord Sydney, will your lordship be pleased to look upon these papers, and see if these be part of them.

L. Sydney. I know them very well, I have read them ten times, I marked them at the council, and that is my mark.

Sol. Gen. Pray, my lord, are those two papers that you have in your hand, two of those papers that my lord president delivered at the cabinet?

L. Sydney. Yes, that they are.

Sol. Gen. My lord president, will you please to look upon them. [Which his lordship did.]

L. President. These are two of the same papers that captain Billop brought me.

Sol. Gen. Now we shall desire to have them read; but give me leave to observe to you, that one of them is a copy of the other; only in the one some words are written short, that are written out at length in the other.

Juryman. Pray, my lord, I desire to ask, are they of the same hand?

Sol. Gen. No, they are of different hands.

Serj. Thompson. Pray, gentlemen of the jury, take notice, and observe these papers, for there is a great deal of matter of great moment in them; for you cannot expect the king's counsel should repeat every thing that is in so many papers as we shall read; it is impossible we should take notice of all.

L. C. J. Holt. Or I either, therefore pray, gentlemen, observe what is read, for I shall be able only just to state the evidence to you.

Ashton. My lord, I hear them say, one of those papers is a copy of the other; I desire, the original may be read, and not the copy.

Serj. Thompson. Who knows which is the original?

L. C. J. Holt. Look you, Mr. Ashton, we do not know which is the original, or which is the copy, they are both found together, they contain the same matter, and the same words; it may be you can tell which is the original.

Serj. Thompson. You may look upon them yourself, and tell us which is the original, if you please.

Ashton. That is very well observed, Sir. That is throwing water upon a dead mouse. Then I desire both of them may be read.

Sol. Gen. Indeed, Mr. Ashton, I think there is a particular reason why you should not desire to have the copy read, because least it should prove to be your own hand writing.

Ashton. Pray, let both be read.

Cl. of Peace reads. "The result of a conference——"

Serj. Tremain. Pray, attend, for this is the scheme of the whole work.

Cl. of Peace reads. "The result of a conference, &c." [And the other was likewise read as before.]

L. C. J. Pollexfen. Pray, let Mr. Ashton see that paper.

[The paper was handed to Mr. Ashton, being one of the papers before read.]

L. C. J. Pollexfen. Mr. Ashton, look upon that same paper a little, satisfy your own mind a little whose hand that paper is in. Look upon it well, I would have you be satisfied about it. Look particularly upon the latter part of it.

Ashton. My lord, I have looked upon it, I have seen it all.

L. C. J. Pollexfen. Come then, give it me back again, and think of it a little in your own heart.

Sol. Gen. My lord Sydney, pray, will your lordship look upon this paper?

L. Sydney. This is one of the papers that was, among the rest, delivered by my lord president, at the cabinet.

Sol. Gen. Pray shew it my lord president; what says your lordship to it?

L. President. This was one of the papers I gave my lord Sydney, and was brought to me in the packet by captain Billop.

Cl. of Peace reads. "That the king would return with a design of making an entire conquest of his people——"

Serj. Thompson. Pray, my lord, give me leave, before it be read, to acquaint the jury what this is, that they may make the better observations upon it. This, gentlemen, is the Heads of a Declaration that was intended to be published when the French came; and you will see what it is when it is read. Pray observe it.

Cl. of Peace reads. "That the king will return," &c. As before.

Serj. Tremain. The next paper is an account which they had taken with them of the force of the kingdom, of the ships, particularly how many in number, what rates, what were in repair, what out of repair, and what a building. Pray shew it my lord Sydney.

L. Sydney. This is another of the papers that I received from my lord president, and marked at the cabinet.

Serj. Thompson. Then shew it my lord president.

L. President. This is one of the papers that were in the packet that captain Billop brought me.

Cl. of the Peace reads.

Sol. Gen. Pray, my lord Sydney, look upon these papers, and tell where your lordship had them.

The Papers were shewn both to the lord President and the lord Sydney.

L. C. J. Holt. My lord president says he received them from captain Billop, and gave them to my lord Sydney; and my lord Sydney says, they are the same he received from my lord president.

Juryman. Are those the papers that have been read, my lord?

Just. Eyres. No, but they both say the same, as to those that have been read.

Juryman. Then pray, my lord, what are those papers that are going to be read?

Serj. Tremain. These are two letters, gentlemen, that are written, giving an account

how the affairs in England stood with reference to the persons concerns that they are written to; and there is a particular passage in one of them, how their young master prevailed in his interest, and got ground of his adversaries. If you observe them, you will easily understand what is meant by them.

Clerk of the Peace reads. This is directed for Mr. Redding, New-year's Eve, "Though the bearer of this, &c." (As before.)

Clerk of the Peace reads. This is directed for Mrs. Redding. "As it is impossible for me to express, &c." (As before.)

Sol. Gen. Now we desire my lord Sydney, and my lord president would look upon these papers.

Juryman. My lord, I desire the former part of that last letter may be read again. (Which was done.)

L. Sydney. These I had from my lord president.

L. President. And I had them out of the packet that captain Billop brought me.

Serj. Tremain. If your lordship please, I will open them to the jury. Here are two letters, in one of them there is an account given, that they were heartily sorry they were disappointed, and that they had not been here already, but hoped they would be here as fast as they can; that the match was concluded, the settlement prepared, and no doubt but the daughter's portion would be well secured, if they would come quickly.

Clerk of the Peace reads. "Dec. 31, 1690. It is directed for Mrs. Charlton. I must not let this bearer depart, madam, &c." (As before.)

Serj. Tremain. That letter tells you that the daughter's portion would be well secured; this that we now produce will tell you, how it shall be raised. It says, the old tenants are weary of their master, and a little matter, if he would but appear in Westminster-Hall, would redeem the estate; and the cause might be brought to a final hearing before the end of Easter term, if they made haste, and it were well solicited.

Clerk of the Peace reads. This is directed for Mr. Jackson, Dec. 31, 1690. The bearer hereof will give you, &c. (As before.)

Sol. Gen. We must desire my lord president, and my lord Sydney, would be pleased to look upon these papers.

L. President. I received these from captain Billop in the packet, and gave it to my lord Sydney.

L. Sydney. These are some of the papers I had from my lord president.

Serj. Tremain. The letters we now produce to be read, seem to be written by a man that was involved in a great trade, that had great projects in his head, and drawn many schemes in his own brain how to carry on the trade; he directs what sort of wares he would have sent, what was proper for their markets, that he had got many a new customer, and hoped they should not be disoblged; that all must be sent before the 1st of March, at least before

the tenth, or the whole summer profits would be lost.

Clerk of the Peace reads. "31 Dec."

L. C. J. Holt. Read the superscription first.

Cl. of the Peace. There is no superscription, my lord, at all.

L. C. J. Holt. Well, read on.

Clerk of the Peace reads. Dec. 31. "The interruption of the former correspondence had a very ill effect many ways, &c." (As before.)

Serj. Tremain. Gentlemen, doubting that letter might not be pressing enough, here is another to the same effect.

Clerk of the Peace reads. "Dec. 31. It is a presumption incident to those that are any ways upon the spot, &c." (As before.)

Serj. Tremain. One would imagine this letter were written by some person that used to talk cant, that he is so ready at it.

Sol. Gen. Pray, my lord president, what says your lordship to these papers?

L. President. These two letters were in the bundle that captain Billop delivered to me, and I delivered them to my lord Sydney.

L. Sydney. These are some of the papers I had from my lord president, at the cabinet.

Serj. Tremain. That first of these papers is a letter wherein the party gives an account of his own condition here, and how he would venture to bring about what was desired.

Clerk of the Peace reads. "31 Dec. 1690. Was my condition more desperate and uneasy than it is," &c. (As before.)

Serj. Tremain. This little paper was inclosed in the other.

Clerk of the Peace reads. "I beg," &c. (As before.)

Serj. Tremain. Now shew this paper to my lord president, and my lord Sydney. [Which was done.]

L. C. J. Holt. My lord president, and my lord Sydney swear the same for this paper, as for the rest.

Serj. Tremain. This paper shews they were going about a deed that they did not desire to have known; it is a key how to explain their meaning.

Clerk of the Peace reads. "For Mrs. Anne Russel," &c. (As before.)

Then three other Papers were shewn to, and sworn by the lord president, and the lord Sydney, to be part of the same papers.

Serj. Tremain. The papers that we are going to read are these. Gentlemen, here is a letter of recommendation in behalf of one Mr. Orbinet, which is a name, they pretended of some person that was at Paris, or to go there, and it is written by one Mr. Dellivere, to his correspondent there; and he tells him, the bearer had something to disclose to him, and that he might have an entire confidence in him: but the letter of recommendation alone, without a sum of money, they reckoned would meet with a bad welcome in France, and therefore they take 500*l.* with them, and here are two bills to pay it.

Then Mr. Humphrey Levermere was sworn to interpret them, being in French, (which he did) and read them as in the former Trial.

Juryman. Were these bills found in that packet?

Serj. Tremain. Yes, yes; they are sworn to by both those lords.

Sol. Gen. Now, pray, my lord, will you please to look upon these papers?

The Lord President and lord Sydney both testified, that those were part of the Papers.

Serj. Thompson. This next paper that we give in evidence is very short. It seems to be a table for the memory of the person that was to carry it. They are short heads for the memory, consisting of a great many particulars; you will make your observations upon them, and what judgment you think fit of them.

Serj. Tremain. My lord, I desire to take notice of these papers that we are now going to read; you will observe these things in them, which are worth your remarking, gentlemen; because these papers that we now read to you, are of themselves sufficient to prove every article in the indictment: for these papers give an account of the ships, their number and force, the forts of the kingdom, how they are manned, how they may be surprized, where the French fleet should fight, where they should assault us, how they should hinder the Dutch and English fleets from joining, what number of soldiers would be sufficient, and what number of ships in Newcastle to plague the city of London, how to manage this whole affair; and it gives characters of the clergy of England, and particularly of the city of London, and says, they are the worst of men.

Serj. Thompson. No, brother, it is the worst of all the clergy.

L. C. J. Holt. Come, read them.

Clerk of the Peace reads. "Lady D. 2,000*l.*" &c. (As before.)

The Jury desired to see the last Papers, and had them delivered to them.

Sol. Gen. Then we rest it here, to see what the prisoner will say to it.

L. C. J. Holt. Mr. Ashton, the king's counsel have done their evidence for the king, what have you to say for yourself?

Ashton. My lord, I humbly desire to know of your lordship, whether all the letters are read, that were read at the trial of my lord Preston?

L. C. J. Holt. What is that material to you, whether they be or not?

Ashton. My lord, I am informed, that there were several letters, that particularly name my lord, implying him to be the bearer, and I desire those letters may be read.

Serj. Thompson. With all my heart, if you do desire it, it shall be read, we do not think it material.

VOL. XII.

Ashton. I do desire it; it will be plain, I believe, from hence, that I could know nothing at all of this matter; and if your lordship please, my lord, to observe it, three or four of these last papers, as Mr. Serj. Tremain observed, were the ground-work of all this business, which refers to Portsmouth and South-Sea, and some other papers; these, I think, with submission, were proved to be the hand of another gentleman, and I desire it may be proved again to the jury, by which I think it will be plain, that they do not affect me.

L. C. J. Holt. Look you, Mr. Ashton, it is not proved to be your hand, nor pretended to be so.

Ashton. But positively proved to be another's hand, as I am informed, and it is that which Mr. Serj. Tremain observed, was the ground-work for carrying on the whole design. I presume the witnesses are in court that proved it then, and I hope your lordship will be so kind as to let it be proved now; they did prove it to be another person's hand upon a trial not long ago.

L. C. J. Holt. If you have a mind to call any witnesses to prove the papers to be another's hand, you may call them.

Ashton. I hope the king's witnesses are now in court that did prove them to be his handwriting, and they will prove it now I suppose.

L. C. J. Holt. If you have a mind, you may call them, they have not a mind to produce them for the king.

Ashton. I know not where they are, my lord. Pray Mr. Aaron Smith, be you so kind as to call them.

L. C. J. Pollexfen. You should have sent and subpoenaed them to be here.

Ashton. Mr. Warr is there, my lord, I desire he may be asked the question: and I believe Mr. Blane is in the court, pray let him be asked.

L. C. J. Holt. Mr. Warr, you are called by the prisoner, as a witness, to prove my lord Preston's hand.

Ashton. Mr. Warr, Mr. Townsend, and Mr. Blane, I desire may be all asked.

L. C. J. Holt. Mr. Ashton, you have insisted upon it, that these papers were my lord Preston's own writing.

Ashton. My lord, I do insist upon it, to know whether they were not proved to be his hand.

Serj. Tremain. Yes, they were so, it is agreed.

Serj. Thompson. We do grant the king's witnesses proved, that they did believe them to be my lord Preston's hand.

L. C. J. Holt. The king's counsel do admit, that these three last papers were not your hand, but they admit them to be my lord Preston's hand, and it is very well done of them to admit it; so that now it is to be taken for granted, that those three last papers were my lord Preston's hand.

Ashton. Then, my lord, I desire the substance of those papers may be the more pressed upon the jury, because Mr. Serj. Tremain ob-

3 E

served that the whole design in the scheme of it lay in those papers, and they are not my hand, but another's; and for what is in them I know nothing, nor am concerned.

L. C. J. Holt. What have you farther to say, Sir?

Sol. Gen. You mentioned another letter, which you did desire should be read.

Ashton. Ay; two or three where my lord is named.

Sol. Gen. This is the letter I suppose you mean, the clerk shall read it.

Clerk of the Peace reads. "Sir, I vow to you, I do not repine at having lost all for your sake," &c. (As before.)

Ashton. Gentlemen, I hope you will observe, in that letter my lord is called the bearer; and it tells that he brings papers with him, by which it is plain, that you cannot imagine I could know any thing of these papers. And, gentlemen, it has not appeared, by any evidence that has been given, that I knew any thing more, than that they were unfortunately found upon me: but with submission, I believe there is another letter, if I am informed right, wherein my lord is named, and called, my lord the bearer.

Sol. Gen. Sir, I do assure you now we have to my observation, read every letter, and every paper, that was read on Saturday.

Ashton. Mr. Solicitor, I am satisfied, for I am confident you would not affirm it, if it were otherwise.

L. C. J. Pollexfen. There is not any letter that says my lord the bearer, but my lord will give you an account, so and so; the bearer will tell you these and these things. Will you have it read again? You shall if you will.

Ashton. I am unwilling to take up your lordship's time, unless the jury desire to have it read again.

Juryman. Pray, my lord, when that letter was read on Saturday, how was it construed by the court? How did they take it then?

L. C. J. Holt. We did take it then, because my lord was mentioned, that he might possibly be the bearer.

L. C. J. Pollexfen. It is very probable, and so it was understood then, that the lord mentioned in the letters was my lord Preston, and so that my lord was the bearer that could give an account of the countess's condition; and in the beginning of those papers that are of my lord's hand, there is mentioned so much money for the lady D——, which is my lady Dorset, I suppose, that is there meant, and that writ that letter.

Ashton. No, my lady Dorchester.

L. C. J. Pollexfen. Dorchester, I cry your mercy; and it is probable, the same reason is a reason still to make it believed that my lord Preston was meant.

Ashton. I think my lord chief justice was pleased to observe, as I have been informed, in giving his charge to the jury, that these papers, some of them naming my lord, must be meant of my lord Preston, there being no other lord

but he; and he likewise gave another reason; says he, They lay by my lord's seals that were produced, and therefore it was plain they could not be Ashton's nor Elliot's.

L. C. J. Holt. No, not so, but my lord might be concerned, because my lord's seals were there where the papers were found.

Ashton. I am wrong informed, if those were not the words my lord chief justice Pollexfen used.

L. C. J. Pollexfen. What do you say were the words? If you will repeat them, I'll tell you as near as I can.

Ashton. Your lordship seemed to infer, that my lord being named, and the bearer in the same paper, that of consequence, that must be my lord Preston, and the papers must be his; and you did give another reason for it, to enforce it, that the same man that saw me take them up, saw them lie by the seals, which were proved to be my lord Preston's, from whence your lordship did say, it is plain they were my lord Preston's, and that Ashton or Elliot could not be concerned in them.

L. C. J. Holt. You mistake that matter, sure there was not any such word said, for that evidence that tended to convict my lord Preston did by no means tend to acquit you; the question then was, how far my lord Preston was concerned; my lord insisted upon it, says he, they were not taken from me, but from Mr. Ashton; there the question was not about you.

Ashton. I humbly hope, my lord, you will forgive me for insisting upon these matters, because I am for life.

L. C. J. Pollexfen. I would do you all the right I can, I assure you, Mr. Ashton; but certainly, there was no such thing said as you have mentioned.

Ashton. My lord, I do not question but you will do me right, and I thought so when I chose the jury out of the first that appeared, without challenging any.

L. C. J. Holt. Well, Sir, pray go on to your defence.

Ashton. My lord, my own defence will be very weak upon the whole, for I am very illiterate and unskilled in the laws, but where I do fail of taking advantage, to observe what may be for my advantage, I hope your lordships will be so kind to me, as well as just (I may call it) to yourselves, being upon your oaths, as to take notice of it. My lord, in the first place —

Serj. Tremain. Before Mr. Ashton proceeds, I would observe one word in a letter that has been read, which is one of these papers; it says, "I say nothing of another gentleman that takes opportunity to see those parts, but he has shewn a zeal and sincerity in the affair equal to most."

Serj. Thompson. You hear, gentlemen, that there is notice taken of another person besides the bearer.

Ashton. Pray, my lord, is it any consequence that I must be the person that must be meant, or that I must know what the contents

of the letter was. There was another besides me, and so it is not plain, who was meant; or if I were the man meant in this letter, it must not therefore follow that I must know of it.

Serj. Tremain. I did not mention it as a proof that you were the person meant, but only to shew that there was another person besides my lord taken notice of in them.

L. C. J. Holt. I must confess, I think Mr. Ashton observes right, it does not concern him, for as well as he was there, there was another, and it is uncertain whether it relates to him or the other, and so it signifies nothing at all; that's my mind. Pray go on, Mr. Ashton.

Ashton. My lord, upon the whole I have this to observe; first as to my business of going into France, I must ingeniously own it, though I protest to you I never owned it or named it to the woman, though she had sworn it, but yet I do now. My design was to go to France, and I had very great and good reason for it, I think; I had endeavoured all ways I could in the world to procure a pass to go to France; it is very well known, I did business under lieutenant-general Worden, that died half a year ago; his accounts are now depending, and such accounts as may be prejudicial in some points to his family, to whom I have always owned, and must, a great obligation, and would be very glad upon all occasions to serve it, and all the branches of it; this was not the whole nor the only design I had in going thither, but I had likewise some business of my own, I have a considerable sum of money owing me, if it be necessary to prove it, I can prove it by a bond from a person that is there; a great sum it is, a very considerable one to me at least. And, my lord, I did think, if I did not go myself, it was impossible for me to do any thing in that affair; and that was the true and only reason of my design in going to France, having been out of hopes of getting any other convenience other-ways; this was not a design just now formed, as if I were just now upon some plot concerning the public, but it has been my design ever since lieutenant-general Worden died, and he upon his death had engaged me to do it; and I once went down, hoping to have gone from Dover, and there I was apprehended and taken. And, my lord, I have used all manner of endeavours to go other ways, but they always failed me, and this way I hoped would have taken: my lord, I do own I did hire the boat, and I did pay the money; but, with submission, I think that is not any manner of treasonable act, my lord: perhaps it is an ill act, but it does not amount in the least to treason; going to the king's enemies, suppose I went upon that account, that is no manner of treason in the world; carrying papers to the king's enemies, except it be proved that I was privy to them, and knew the contents of them, if lawyers inform me right, is not treason; then what remains? It is true, I must own the papers were found upon me, and I believe, there is nobody that has heard the evidence

that has been given, but must readily conclude, that I found them in the place where the seaman says I took them up; and besides, my lord, there is not any manner of proof so much as aimed at by the king's counsel in all their evidence, that I was privy to any one of these papers; so that, my lord, I think there is very little proved upon me at all; I had the misfortune to be taken in this company that was going where these papers taken, it's true, but they have not attempted to prove that I was privy to, or knew any thing of them at all, nor that I was more concerned than that they were taken in my stomach; this is all I have to observe upon the whole: as to the business of the indictment, there are great and grievous aggravations in it, and such as I am not able to comprehend the meaning of, the words confound me; and therefore I humbly desire your lordship to tell me upon what statute I am indicted.

L. C. J. Holt. I'll tell you, Mr. Ashton, you are indicted upon the 25th of Edward the 3rd, for conspiring, compassing, and imagining the death of the king and queen, and for that purpose going to France, and endeavouring to incite the French king to invade the kingdom, and telling him how he should do it, and letting him know in what state and condition the kingdom was, and how fit to be invaded.

Ashton. Pray, my lord, is that at all proved upon me?

L. C. J. Holt. That is the question that the jury are to judge of upon the evidence that has been given.

Ashton. As to that of compassing the death of the king and queen, I am ignorant of dealings in law; but I conceive there are several species of treason mentioned in that act of the 25th of Edward 3rd, and as to the imagining the death of the king, that's only to be proved by some overt-act: now I think nothing at all has been proved of any open act conducing to prove the imagination or compassing the death of the king or queen, no manner of consultation or treasonable act at all; and therefore, my lord, I do not see that there is any great matter that is proved upon me, and I hope you are of that opinion too.

L. C. J. Holt. Mr. Ashton, that you may not go away with a mistake, any that designed the deposition of the king and queen, and the invasion of the kingdom, which is proved by any overt-act, is sufficient to prove that they compass and imagine the death of the king and queen.

Ashton. I presume it may be so; I believe that may be the construction of the law.

L. C. J. Holt. And I make no question but those that you have consulted with have told you as much.

Ashton. Truly as to counsel, my trial has been as hard as ever man met withal.

L. C. J. Holt. Why do you say so, Mr. Ashton? the court has not been hard upon you.

Ashton. My lord, I do not complain of the court, but as to the matter of time, I had notice

by that gentleman, Mr. Bale, to prepare for my trial, and that was on Friday, and not before.

L. C. J. Pollexfen. Friday was sevensnight, you mean, I suppose.

Ashton. Yes, I do mean Friday was seven-night, I was then a close prisoner, I had not the opportunity or liberty of seeing any Christian soul; I spake to him then, and told him, Mr. Bale, this is very short notice, pray be so kind as to move my lord that I may have counsel; truly he was civil enough, and said, he would do all he could; says he, Will you give me the names of your counsel? So I gave him the names of four and of a solicitor; but I never heard more of him in the matter: I did with all my industry and skill give my friends notice, but I was under great difficulty, for I had not the liberty of pen, ink, nor paper, nor a man to send upon a message on Saturday; I gave my friends notice of it upon Sunday, which was no very good day for business, they applied themselves to my lord Sydney, whose favour and kindness I shall always own as long as I live; he gave me all the dispatch possible, and got me an order to see my wife that day, though it was Sunday; the next day I made application to have my council come to me, that was Monday; he with the same readiness procured that: but it was Tuesday in the afternoon before I could see any living soul but my wife; and some of the counsel that I desired would not readily come to me, and it was Wednesday before I did see any body of them, and so I had but Wednesday and Thursday to consult with them in. On Friday I was brought here, and I endeavoured to procure a copy of the pannel, that I might inform myself of the characters of the men that were to be my jury; and my lord, I would desire you would give me leave to clear one point, which through inadvertency slipt from me about the time that I desir'd to send to enquire about the jury. I did not mean, as was apprehended, to send to them to take them off, but I only meant to enquire after their characters; this was done upon Friday; I had not a copy of the pannel till last Friday, when we were arraigned in court, it was two of the clock before the pannel was given us, it was between three and four when we came to Newgate; we were to come upon our trial the next morning by eight of the clock; so that before the copies could be transcribed for us, there were left but six hours for us to enquire into the morals of so many men, of whom some lived eight, some ten, some fifteen miles out of town; for my part I was not able to enquire after any one, and that your lordship may think, by my taking the first twelve that appeared, and believing myself innocent of this matter, I resolved to put myself upon my trial by any twelve indifferent English men; I only beg if I have omitted any thing in reference to myself, or misbehaved myself with respect to the bench, that you will please to set me right, and consider that I stand here for my life; and to grant me your pardon for

any thing wherein I have offended your lordships, to whom, and to the jury, I refer my cause: only I beg leave to call two or three witnesses, I know it hath been allowed before in such cases, to give some short account of my life and conversation, because it hath been reflected upon me that I was a Papist, because I designed to go into France; but I believe there is not any man, whose devotion to the Protestant religion established by law, is greater than mine hath been, or to whom that religion is dearer than to myself.

L. C. J. Holt. You are not accused of any such thing; nobody pretends you are a Papist; but call whom you will.

Ashton. Pray call Dr. Bursh, Dr. Lake, Dr. Fitz-Williams, and Dr. Davenant. There is Dr. Fitz-Williams; I beg the favour of you, Dr. Fitz-Williams, to give the court an account of your acquaintance with me, and particularly about my religion.*

Dr. Fitz-Williams. Will your lordship give me leave, my lord?

L. C. J. Holt. Ay; come, what do you know of Mr. Ashton?

Dr. Fitz-Williams. I suppose, my lord, that he calls me in as a witness to his religion and to his morality, I think so; with my lord's permission I will give the truest testimony I can: I have known him for some time, he used to be frequently at the service of the church in the Protestant part of the family at St. James's, where I was chaplain; during the time I was there, I observed him to be a frequent receiver of the holy communion; and, as far as I could observe, lived answerable to what he professed to be, a sincere member of the church of England, and a serious Christian. For his sincerity and zeal for the Protestant religion, I can give this instance, he had an aunt that had a relation to that family, one Mrs. Du-pee, who he thought did warp a little towards Popery, and he desired me about five years ago to have recourse to her, and desired to know if she were dissatisfied with any point of religion in the church of England, in communion with which she lived visibly, and I would do my endeavour to satisfy her; as I do not doubt but I could. She was desirous to know who was the person that sent me: I told her I came of my own head in the greatest part; but I suppressed the interposition of Mr. Ashton for several reasons, and told her, I had great suspicions of her inclining the other way; and I had great reason for it, because of her husband who was a Papist, and the great resort of Popish priests to their lodgings. She told me then, she was satisfied in every thing, and if she had any dissatisfaction she would send for me to give me an account. Some months after I came to St.

* See, in this Collection, the Cases of lord Russell, vol. 9, pp. 621, et seq.; of Hampden, vol. 9, p. 1099; of Rosewell, vol. 10, pp. 206, et seq.; of Cornish, vol. 11, p. 381, and of Hardy, A. D. 1794, as referred to in the Notes to those Cases.

James's to wait, and observing her to be more than usually before from prayers in the chapel, I went to her, and asked her the reason: she told me, it was because she was making some linen for her master king James, which was to be made in haste: but she then designed to go for Flanders quickly; and Mr. Ashton, about that time, or two or three days after, told me his aunt was gone to France, and spoke it with very great concern, and that he believed, under the pretence of her calling over her younger son, she was gone to declare herself a Papist, and he was very much troubled at it. This I know for his zeal for the Protestant religion.

L. C. J. Holt. When was this, doctor?

Dr. Fitz-Williams. This was, my lord, about five years ago.

Ashton. That is, as to the business of my aunt, I suppose; I know not how he comes to mention it; but as to my life and morals, you can give a later account.

Dr. Fitz-Williams. My lord, I have administered the sacrament to him.

L. C. J. Holt. What questions do you farther ask him, Mr. Ashton? or can you say any more, doctor?

Dr. Fitz-Williams. No, my lord, I can say no more, but that he received the sacrament about half a year ago.

Serj. Thompson. We have not objected any thing, as to his religion, at all.

Ashton. But I know it has been a reflection that has gone about of me, that I am a Papist, therefore I beg leave to prove my religion and conversation.

L. C. J. Holt. Nay, call whom you will, you shall not be hindered, take what course you please.

Serj. Tremain. Pray, doctor, you say he has received the sacrament lately; when was that, and where?

Dr. Fitz-Williams. It was at Ely Chapel, within this six or seven months.

L. C. J. Pollexfen. Have you been lately conversant with him?

Dr. Fitz-Williams. Truly, my lord, I have not been very lately.

L. C. J. Pollexfen. Pray, what have you heard him say concerning his affection to king William and queen Mary?

Dr. Fitz-Williams. I do not remember any thing at all of that.

L. C. J. Pollexfen. Have you heard him say any thing to the contrary?

Dr. Fitz-Williams. No, I cannot remember that.

Serj. Tremain. What have you heard him say about his affection to king James?

L. C. J. Holt. Do not ask him that, there may be a snare in that question.

Juryman. You say, doctor, that he received the sacrament six months ago in Ely chapel: did you deliver the sacrament to him there?

Dr. Fitz-Williams. No, I did not.

Juryman. Pray, doctor, were the prayers

that were used at that time altered, as they are now, in the common-prayer-book.

Dr. Fitz-Williams. I cannot say they were.

L. C. J. Pollexfen. Did you ever see him drink king James's health?

Dr. Fitz-Williams. I do not use to drink healths, I came here only to do an office of justice and kindness to Mr. Ashton, to testify about his religion and conversation.

Serj. Tremain. But answer the question, did you ever see him drink king James's health?

Dr. Fitz-Williams. I cannot remember I ever did.

Juryman. Was king William and queen Mary prayed for in those prayers?

Dr. Fitz-Williams. I cannot say they were.*

Just. Eyres. But the juryman's question was, Whether king William and queen Mary were prayed for? and whether the prayers were as they are now altered?

Dr. Fitz-Williams. My lord, I say, I don't remember there were any names mentioned, as the prayers are now altered.

Serj. Tremain. That is very well.

Dr. Fitz-Williams. I did neither read the prayers, Sir, nor administer the communion at that time.

L. C. J. Pollexfen. But you were not at the prayers, as they are now altered, I perceive?

Dr. Fitz-Williams. Yes, I have, several times.

Serj. Thompson. Not with that gentleman, Mr. Ashton?

Dr. Fitz-Williams. But I have been an hundred times at the prayers as they are now altered.

Ashton. I desire Dr. Lake, who is there upon the bench, that he may be asked what he knows of me.

Serj. Tremain. But I have one question to ask of Dr. Fitz-Williams before he goes.

L. C. J. Holt. What will you ask him?

Serj. Tremain. I would ask you, Sir, one question. Have you taken the oaths to this king and queen?

Dr. Fitz-Williams. No, I have not, Sir, that is my unhappiness; but I know how to submit, and live peaceably under them.

Ashton. But there is one Dr. Lake that has taken them, he will give you an account what he knows of me.

Dr. Fitz-Williams. If any one can say I have done or acted any thing against the government, I will readily submit to be punished for it.

L. C. J. Holt. Well, Dr. Lake, what say you?

Dr. Lake. My lord, I have known Mr. Ashton above these sixteen years, we lived together in the same family several of them; I always observed him to be a person of exemplary piety, and singular devotion; he duly came to the prayers of the church twice a day, and to the sacrament once a month; he has taken oc-

* See vol. 9, p. 624.

occasion, that I know, several times, both at St. James's and at Edinburgh, to testify his zeal against Popery: and I am apt to think, that he has suffered sometimes for doing so.

Ashton. Dr. Bursh, pray, as to my religion, I beg you to give an account what you know of me; particularly something you may remember of me, of my perhaps over-heat against Popery.

Dr. Bursh. My lord, I have long known Mr. Ashton, the prisoner at the bar, and, till within these two years, frequently conversed with him; and while I did so, I believed him a good Protestant, and I have so many instances of it, and particularly before some upon whom his fortune depended; but as to any thing of late, I can say nothing, because our conversation has ceased.

Serj. Thompson. Dr. Bursh, have you known any thing of Mr. Ashton's conversation for two years past?—*Dr. Bursh.* No, Sir.

L. C. J. Holt. Have you any thing more, Mr. Ashton?

Ashton. No, my lord, I have nothing more, unless your lordship desire any thing more of this nature.

L. C. J. Holt. Call whom you will.

Ashton. Here is one Mr. Tomlinson.

L. C. J. Holt. Come, what say you, Sir?

Tomlinson. My lord, I waited upon major general Worden when he was sick, and there read the prayers of the church, and Mr. Ashton was a constant attender upon the public prayers at the visitation of the sick, and was very devout; that is all I can say.

L. C. J. Holt. When was this?

Tomlinson. It was in the sickness of major gen. Worden.

L. C. J. Holt. How long ago was that?

Tomlinson. It was about half a year ago.

L. C. J. Pollexfen. Were those prayers as they are altered now, or not?

Tomlinson. It was only the Visitation of the Sick, and the Collect for the morning, and Collect for the evening, because the general's sickness was such, that he could not bear long prayers.

L. C. J. Holt. Sir, have you been acquainted with the prisoner any time?

Tomlinson. About eight months.

L. C. J. Holt. Have you any more witnesses, Mr. Ashton?—*Ashton.* No, my lord.

L. C. J. Holt. Then I would have you to answer me this one thing; why were you so desirous, and used such importunity, that the papers should be thrown overboard?

Ashton. My lord, that is a point I ought to have spoke to, to clear myself.

L. C. J. Holt. It seems material, and I would not have it forgot, if you can answer it.

Ashton. I humbly thank your lordship, and whatsoever my fate is, I cannot but own I have had a fair trial for my life, and I thank your lordship for putting me in mind.

L. C. J. Holt. And take this other thing with it, Why did you desire captain Billop to go along with you where you were going?

Ashton. He has sworn it, my lord, that I did so, but as I hope for salvation, if I were to die immediately, I do not know that I spoke to him of any such thing. How was it possible that I should prevail with him? or how was it likely that I should force him to go along with us, when he had about twelve or fourteen men with him armed, and we unarmed?

L. C. J. Holt. Nay, it was not forcing, it was but persuading him to go.

Ashton. My lord, I do not know any thing of it, I'll assure you; but as for endeavouring to persuade him to throw the packet overboard, I must own I did endeavour to persuade him to it; and, I do presume, there is nobody in court, that had been engaged with a person so unfortunate, that would not have done the same thing for any common friend, not knowing what the contents of those papers were, seeing them in that posture, especially when I saw some body else so near me, so uneasy and concerned to have them seen.

L. C. J. Holt. Then, Mr. Ashton, there's another thing which you opened, which I would have you prove; you say you were to go into France upon the affairs of col. Worden's family; first you say col. Worden had a great account to make up; how will you make that out?

Ashton. My lord, if your lordship please, I will prove here in court, though it is a sort of surprize upon me, that there is a great account depending; I believe I may appeal to Mr. Solicitor himself, who knows that there is a Petition in the House of Commons, now depending, from the queen's tradesmen and debtors, whom she owed 68,000*l.* She did assign the arrears of some growing rents for the satisfaction of this debt: but the king and government have not thought fit to let it be applied to her use, or to the paying of those debts she assigned it to. Nay, it has gone farther: I can appeal to several persons, there is one man by chance in the court, that I believe does know that I promised and engaged, and actually have paid a great part of this debt; for believing that the money was good upon the assignment, I have actually paid some of these men out of my own pocket, and perhaps more than became me to venture; I think it may very well call my discretion in question.

L. C. J. Holt. Who will you have called, Mr. Ashton?

Ashton. My lord, here is Mr. Spalding.

L. C. J. Holt. That the late queen does owe people money, that I believe is true.

Ashton. Pray, Mr. Spalding, will you give the court an account, whether there is any money due from the queen to you?

Spalding. My lords, and you gentlemen of the jury, I have a debt due to me from the late queen, as her coach harness-maker; it is 470*l.* or something thereabouts, and Mr. Ashton has paid me part of this debt; this I do own.

Serj. Tremain. Pray, how long have you been acquainted with Mr. Ashton, Sir?

Spalding. A dozen years, Sir.

Serj. Tremain. Have you any intimacy with him?

Spalding. He and I have been very well acquainted.

Serj. Tremain. Have you seen Mr. Ashton write at any time?

Spalding. Yes, I have.

Serj. Tremain. Do you know his hand?

Spalding. Yes, I think I do.

L. C. J. Pollexfen. Pray how came Mr. Ashton to pay you that part of your money?

Spalding. I pressed Mr. Ashton, and told him my necessities, and he did advance me this money.

L. C. J. Holt. How much did he advance?

Spalding. Almost 400*l*.

L. C. J. Pollexfen. When was it he paid it you?—Spalding. Almost a year ago.

L. C. J. Holt. Did he pay it out of his own pocket?—Spalding. I believe so.

L. C. J. Holt. I believe so; or was it money that he had returned to him?

Spalding. I believe it was out of his own pocket, my lord.

L. C. J. Holt. Why do you believe so?

Spalding. Truly I believe it was out of his own pocket.

L. C. J. Pollexfen. Pray who was to repay him?

Spalding. About that very time we were petitioning the House of Commons, that we might have our debts secured, and our money out of the arrears of rents due to the late queen, according to her assignment; and we so far pressed the matter that there was a clause inserted into the bill for the securing of our debt; but upon the next day, or the day following, the parliament was prorogued.

L. C. J. Pollexfen. Which way did he expect to be repaid?

Spalding. I'll tell you which way, I suppose, my lord.

L. C. J. Pollexfen. Did he not tell you which way?

Spalding. No, he never told me.

L. C. J. Pollexfen. Mr. Ashton, did you never tell him how you should be repaid?

Ashton. My lord, I hoped to be repaid, and concluded I should, out of the arrears of rent in the tenants hands.

L. C. J. Holt. But you are very kind to pay money out of your own pocket upon such hopes.

Serj. Tremain. Pray, Sir, will you look upon that paper; do you know the hand?

Spalding. No, Sir, I do not.

L. C. J. Holt. I suppose he did compound with you.

L. C. J. Pollexfen. This does shew an extraordinary kindness towards some sort of people.

Ashton. If he discounted the interest to the time that we reckoned it would be paid, you know that prejudice would be to him, and not to me; it may, indeed, prove a prejudice at last, if the debt be not paid, because the receipt is conditional: if it be not allowed him, she shall discount to me again.

L. C. J. Pollexfen. Was there no money returned over from the queen, king James's queen that was?

Ashton. No, my lord, directly nor indirectly, not one penny. I believe they are not in a condition to return money.

L. C. J. Holt. Well, Mr. Ashton, what have you more?

Ashton. I have nothing more to say, I submit my cause to your lordship.

L. C. J. Pollexfen. Look you, Mr. Ashton, as to some things that you have mentioned, first, there is nobody questions but you are a Protestant; nay, as far as I discern, so they are all that are concerned in this matter. The whole design shews, that they are all so careful of the Protestant religion, that they design to restore and establish it by the king of France; so that it appears they are all protestants concerned in this project.

Ashton. Pray, my lord, who is it that proposes that?

L. C. J. Pollexfen. The papers that were carrying to France, Mr. Ashton, you have heard them read.

Ashton. I hope, my lord, that no doubtful insinuations or suggestions are to affect me.

Serj. Tremain. There is a gentleman that was called to by the prisoner, it may be, he knows his hand; pray, Dr. Fitz Williams, loook upon that paper, you have been acquainted with him many years, do you know his hand?

Dr. F. Williams. No, Sir, I do not know his hand, I never did see him write; I cannot say I ever received a letter from him.

Ashton. I entirely submit my cause to your lordship and the jury.

L. C. J. Holt. Then you have done, Mr. Ashton?—Ashton. Yes.

Just. Eyres. Mr. Ashton, because you cannot reply again upon my Lord Chief Justice, after he has summed up the evidence; there is another thing that I would put you in mind of, that you may give an answer to it. Captain Billop swears, before the papers were found upon you (and it seems to stick upon you) when he was informed by the seamen, that you had put something in your bosom, and he asked you what it was, you said, nothing but your handkerchief: Now, if you knew not what was in the papers, how came you to deny you had any thing in your bosom?

Ashton. For the same reason that I would have endeavoured to have had them thrown over board; out of kindness to the person with whom I happened to be taken.

L. C. J. Pollexfen. Consider, Mr. Ashton, what a many strange things you run upon: first, you would have it believed, that you had a mind to go into France upon your own account.—Ashton. I do own that.

L. C. J. Pollexfen. Next then, that you hired a vessel for you and Elliot. Why would you have Elliot to go with you into France?

Ashton. I would not have him; he desired the favour of going.

L. C. J. *Holt*. Who desired my lord Preston to go, or did he desire to go with you?

Ashton. I had not seen Mr. Elliot of three months before I went into the city to hire the boat.

L. C. J. *Pollexfen*. Why would you have my lord Preston go with you?

Ashton. Why would I have my lord Preston go with me? My lord, I hoped to have got my passage free with a person of my lord's quality.

L. C. J. *Holt*. Then you hired this vessel for my lord Preston?

Ashton. No, my lord.

L. C. J. *Holt*. Was it my lord's money, or your own that you paid?

Ashton. The money I paid; but how I should be repaid I cannot tell.

L. C. J. *Holt*. Would you, for your own convenience, pay 100*l.* for a boat to go to France, and yet hope to get your passage free by taking in my lord Preston?

Ashton. Truly, my lord, I cannot tell how it would have been; at the utmost, we could but have paid our share of it.

L. C. J. *Holt*. But you can tell me if you will; I ask you, how it was agreed amongst you?

Ashton. Truly, my lord, as I hope to be saved, I cannot tell.

L. C. J. *Holt*. Then there is another thing: Why did you desire one of the seamen to say, that you were to go to Flanders, and not to France, and give him half a crown to say so?

Ashton. I presume, your lordship knows that it is a fault, though it be not a treasonable fault, to go into France?

L. C. J. *Pollexfen*. But, Mr. Ashton, truth is the thing that we are enquiring after; and that is the thing we would have prevail, and I hope shall in all cases; If you are not guilty we hope it will prevail of your side; if you are guilty, we hope it will prevail on the other side. Now, how likely is it that you should get into this same company by chance, without a previous agreement? You sent something from Burdett's, a hamper and a trunk; and afterwards some other things went from Rigby's, who is your father-in-law.

Ashton. No, there was nothing at all carried from Mr. Rigby's.

L. C. J. *Holt*. Yes, the leather bag, I believe. But another thing is this, that if it be possible, you will do well to give an answer to: Why did you enquire for a hiding place? Why did you ask the master of the ship, whether there was a convenient place to hide in?

Ashton. As to that matter, my lord, I had heard of divers people, that actually had passes, and were going to Flanders, yet were stopped and brought to town again. I believe my lord Nottingham has bailed many a one, and your lordship knows it to be so, and has bailed many yourself; and therefore I had great reason, upon that account, to endeavour secrecy as much as I could.

L. C. J. *Pollexfen*. Mr. Ashton, as I remember, you said yourself, you were once before a going over, and had the misfortune to be stopt: Now, to venture a second time without a pass, was something strange. Why had you not gone and applied yourself to the secretary for a pass?

Ashton. I had made all the application I could to my lord Nottingham, I cannot say in my own name, because I was sure before hand, I should be denied; but I did by others hands endeavour to have got a pass to have gone into Flanders, because it was of extraordinary consequence to me, as I tell your lordship, to go quickly.

L. C. J. *Holt*. If you had such an occasion to go, and had made it out to the secretary, and given security, you might have got it, sure.

L. C. J. *Pollexfen*. One word further: Why should you be so much concerned to have these papers thrown over-board?

Ashton. Perfectly out of friendship; and had I been travelling with your lordship, or any man else that had been so unfortunate, I would have done the same.

L. C. J. *Pollexfen*. Well, have you any more to say for yourself?

Serj. *Thompson*. Mr. Ashton, call what witnesses you will, and speak as long as you will for yourself, you shall be heard at large.

Ashton. Mr. Serjeant, I thank you heartily, I have no more at present.

L. C. J. *Holt*. Then the king's counsel desire to speak a word to the jury.

Serj. *Thompson*. May it please your lordship, and you gentlemen of the jury: it falls out to be my duty to sum up the evidence that has been given. I opened the cause at the beginning to you, and I opened it at large; and many particulars there were mentioned, and truly, I do not think we have failed in the proof of any one; I know you are men of that observation, that I need not, nor shall take upon me to repeat all the particular circumstances; but as near as I can, I shall touch upon the heads of the evidence, and do it with as equal regard to my duty, and as much tenderness to the prisoner, as any one can do.

Gentlemen, in the first place, you see what the indictment is for; 'tis for a high treason of a very great nature, no less than the deposing the king and queen, and subverting this government, and that by a French power and interest: if inviting an invasion, and giving an account of the weakness, and where the strength of the government lay, carrying papers to solicit the French to come, and to incite this nation into rebellion, that so they might depose this king, and set up the late king James again: if these be high treason, as doubtless they are; then, gentlemen, how far forth the prisoner at the bar had a share in it, I must refer to you from what we have proved.

He is the man, it seems, that made the first step; for you may remember it was proved, that he met this woman at Burdet's, in the city,

for the hiring of this ship, and after two or three meetings more, they come to a conclusion, and 93 guineas and sixpence are deposited to make up 100*l.* which was the price agreed upon, and that was actually paid by Mr. Ashton; this is sworn to be so.

The next thing is, to what purpose this money was paid, and the ship hired; that is directly sworn, it was to carry Mr. Ashton, and two or three more of his friends, not naming of them, and they were to go for France; one of the witnesses says, to any port in France, it was not directly declared to what part. This, I say, was the purpose for which the money was paid, and the vessel hired; and this was to carry you, Mr. Ashton, and two or three more friends of his into France.

It is true, Mr. Elliot afterwards did meet Mr. Ashton, and I think was by at the bargain making, or at leastwise, when the money was paid; I will not be positive in that, because I would do him no wrong, he being to make his defence hereafter.

Ashton. No, he was not by; I made the bargain myself.

Serj. Thompson. Then afterwards I remember one circumstance: when he hired this ship, he was to hire a ship that had a place to hide in, and so he must needs know upon what design; I say, by that he must needs know, that there was a matter of great moment which he was to transact, for he was to have such a ship as he might hide in.

After this ship was hired, then they met in Covent-Garden, and there they take order with the man to go down with them to the stairs, where the waterman was called; indeed Mr. Ashton did part from them in the way, but presently after came to them at the stairs; and there came my lord Preston and his man, who, together with Elliot, that was there before, I think before, all embarked in the boat, and were carried to the ship, and made all the haste away they could for France.

When they were there, and came to a place of danger, near a ship of war, there was care taken, according as they had enquired of the master of the ship before, that they should be hid, and hid they were.

Afterwards, when they were past that danger, when they came to the Block-House at Gravesend, there they thought fit to hide again, and did so; and there they concealed themselves, 'till they were surprised in that place by captain Billop.

My lord, after such time as captain Billop had surprised them, he tells you, how he came down after this smack, you see what happened; my lord Preston first came up; and after he had searched my lord Preston, Elliot came up, and he was searched; and after Mr. Ashton was once come up, he went down to fetch his hat, and there was seen to take up this bundle of papers, and there the papers, upon search, were found in Mr. Ashton's breast.

This being so found in his breast, you have heard what applications were made by this

VOL. XII.

gentleman to get these papers cast over-board, and what promises were made to the captain, and what likelihood there was of making his fortune, if he would go along with them, or throw away the packet.

You hear, gentlemen, that after they came to Whitehall, one of the men swear, that this gentleman gave them money, that they should say, they were not hired for France, but for Flanders.

These, gentlemen, are the several circumstances that do appear in this case, which shew the mighty care and diligence that was used to get these papers suppressed that had been thus taken, or to get them again into their own custody; and that is a matter that shews how far this gentleman was concerned in this design; and taking all these things together, I think there can no greater evidence be given, that Mr. Ashton was in this contrivance, that he was concerned in the message, that he was to be sent, and in all this business that was to be done, was as much guilty as my lord Preston, who now stands convicted for it.

And the court will tell you, gentlemen, there are no accessories in treason, all are principals; though it be not actually proved, that this gentleman did know all these papers what they were; yet in case he hired a ship for himself and the lord whose papers they were, to go in, and take such notice of the papers, as to take care of them, to suppress and conceal them, that is an evidence of his knowledge of the importance of them; and if so, he will be equally guilty of the high treason.

L. C. J. Holt. I doubt that.

Serj. Thompson. My lord, I would not willingly press any thing further than the nature of the thing will bear.

L. C. J. Holt. Pray go on, brother; we are only talking among ourselves.

Serj. Thompson. The next thing is this, that is to be considered, that after such time as these papers came to be laid open, what is it that appears among them? Truly, I shall not take upon me to repeat so much as the substance, much less the particulars of the several papers; but, I must say that there does appear to be a formed design of subverting the government, of deposing this king and queen, and of bringing us all into war, rebellion and bloodshed; all this under a pretence of establishing the protestant religion, and our legal government again (though I can see no means they had to depend upon for it), but by a Popish interest, and a French power; and how far that is possible, or probable, to promote such an end, by such means, I leave to your consideration.

Gentlemen, you have heard all the particular papers read; here was the resolution of a consult and conference, where this project was designed; here were heads of a declaration, that was to be framed to make the credulous believe, what mighty things should be done upon their new revolution: you see, what letters have been produced, and cannot but easily apprehend what is the import and meaning of

them. I resolve, as I said, not to mention the particulars, but there is scarce one line among them but what is treason, for it all tends to this purpose and design, to depose the king, and alter the present government.

Now, upon the whole matter, gentlemen, what this gentleman has said, I confess to me seems strange; he said indeed at first, that he had no defence at all, or that which was very weak, and so it should seem the truth was, for you see what his defence has been.

He says, that he went into France, that he owns that he was going thither; but what was it to do? It was to settle some accounts with the family of colonel Worden, and to receive a sum of money that was owing to him by a person there.

Gentlemen, if the design had so much innocence in it, certainly he might have had a pass; at least, there was no need of hiring a vessel at such an extravagant rate; there was no necessity of hiding in this secret manner, and no necessity of impossible suggestions, and proffering great rewards for the disposing of, and concealing these papers.

Gentlemen, you will remember many particulars more, which have not slipt your observation; I shall not take upon me to repeat them, but leave them to your consideration.

Only this I must say, that this is a treason of a very high nature, a treason to depose a king that has ventured all he had, even his life has been in danger, and his blood has been spilt to establish this government, and our religion, and our laws, and yet it seems there are men that think this may be better done by a Popish interest and French power, which I think nobody of either wisdom or honesty can imagine, or will engage in, and therefore I leave it to your determination.

L. C. J. Holt. Gentlemen of the jury, you understand, that Mr. Ashton is now tried for high-treason; it is mentioned in the indictment, to be for conspiring the death, and deposing the king and queen, and for that purpose he did endeavour to go into France, and to carry divers proposals in writing, and several memorials to shew how this kingdom might be invaded by the French.

To prove this, the evidence that has been produced and given by the king's council has been long, and consists of two parts; witnesses *viva voce*, they have told how Mr. Ashton designed a voyage to France, and that he hired a ship for that purpose, and several papers were taken out of his bosom.

In the first place the witnesses tell you, that about the latter end of December last, Mr. Ashton and Mr. Elliot came to Burdett's house, where they met with Mrs. Pratt, and Burdett having before that spoken to her about a smack that she called the Thomas and Elizabeth.

Then there was a meeting appointed between her and Mr. Ashton at the Wonder tavern, where they did treat and debate about the hire of it; afterwards they came back to Burdett's again; and there the agreement was made be-

twixt the woman and Mr. Ashton, the prisoner at the bar, to have a hundred pounds. Ninety-three guineas and sixpence was fetched down by Mr. Ashton, and told out, and deposited in the hands of Mrs. Burdett; then there was a six-pence broken, and one part Mrs. Burdett had, and the other part Mr. Ashton had; and when either the master, or Mrs. Pratt should bring the part of the six-pence that Mr. Ashton kept, to Mrs. Burdett, the hundred pounds was to be paid.

And this agreement being made, it is positively sworn, that they did ask, whether there was a hiding place in that vessel? An answer was made, there was one; and thereupon a note was given that the master and Mrs. Pratt should go to the Seven Stars in Covent-Garden.

Upon Wednesday night, they went there according to the directions, where meets Ashton and Elliot; but before that there was a boat hired at Surrey Stairs to carry them down to the ship through bridge, over against the Tower; but the tide not serving till about ten o'clock at night, they had agreed with a waterman for half a crown to carry them, and he was to stay till the tide served. And when they went out from Rigby's they parted, Elliot and the master went together, Mr. Ashton did not go with them, but came near about the same time to Surry Stairs, where they took water.

Being aboard, it was observed that all these gentlemen were very timorous, and seemed to be much frightened at the sight of any vessel, from which there was any apprehension of their being taken notice of; and therefore they went down under the quarter hatches; which is a place very inconvenient for such persons, where none could stand or sit upright, but were forced to lie upon the boards, or upon the ballast.

It seems some intimation was given, that some gentleman had an intention to go into France to prosecute some treasonable design: and captain Billop being employed to pursue them, which he did in a pinnace, when he came near the vessel where they were, he called to the vessel, and under pretence of pressing seamen, he went on board: the master of the vessel said he had a protection from the admiralty; so that there was no cause for them to fear pressing; nor indeed was there any for gentlemen to fear it, they being not liable to be pressed.

When the captain came near the ship, and declared his intent of coming on board, these gentlemen were gone under the quarter-hatches again. Captain Billop coming on board, and speaking about pressing of the men, and saying, there was a couple that would make good seamen for the king; the master shewed his protection, and then the captain said he would search further in the ship, and so he did; and then he pulls up the boards, and there he finds all these gentlemen, who were called up one after another, and search'd by the captain.

Gentlemen, there is one of the witnesses tells you, that when they were come up, he saw a packet that lay in this very place under

the quarter-hatches, unto which was tied a piece of lead, which Mr. Ashton takes up, and puts in his bosom, with which the captain being acquainted, enquiry is made by him, what Mr. Ashton had there? Mr. Ashton said it was his handkerchief, and nothing but that which he pulled out: but captain Billop puts his hand in his bosom, between his coat and his body, and takes out the packet, and carried these gentlemen on board the George frigate, where they stayed till the tide served to bring them to Whitehall.

But before they came on board the frigate, Mr. Ashton was very importunate with him to throw this packet into the water; when they were on board the George frigate, and in the cabin alone, they continued their importunity.

Now, say they, we have you here, and you are alone, pray will you throw this packet overboard? And particularly Mr. Ashton said, it would do the captain no good to injure so many gentlemen; and Mr. Elliot would have persuaded the captain to take the lead that was tied to the packet, and tie it to some letters that were taken out of my lord Preston's pocket, and throw the packet overboard; and then have informed the king and council, that those letters was the packet taken out of Mr. Ashton's bosom: but the captain very honestly rejected all their motions of that kind.

Truly, gentlemen, my memory will not serve me to repeat all the particulars,* but I question not your Notes will bring them to your minds. Mr. Elliot, it seems, was so mightily concerned at their being taken with these papers, that when they shot London-bridge, he wish'd the bridge might have fallen upon them and knock'd them on the head; and, when they were got through, he wish'd a thunder-bolt would fall down into the boat and sink them: that, indeed, was Mr. Elliot, and not Mr. Ashton; but Mr. Ashton was as much concerned about disposing of the packet as Mr. Elliot.

At Whitehall this packet is opened, and you have several papers produced in evidence, and read to you; you have heard what evidence has been given, that these are the very papers that were in the packet thus taken.

First of all, captain Billop tells you, he carried them to my lord Nottingham, and that they lay there in his office; he withdrew, indeed, while my lord Nottingham examined my lord Preston, but the packet was not opened in the interim, but there was only a paper stuck on the outside, that my lord had taken off before the captain returned into the room, and there the packet remained entire. He says, My lord Nottingham opened the packet, and put up all the papers that were in the packet in his presence into a cover again, and sealed them up with his seal. My lord Nottingham

says positively, he did put up all the papers that were in the packet again, all and no more, except the cover, and that he sealed up and delivered it to captain Billop.

Captain Billop says, he took these very papers from my lord Nottingham, and as he received them, carried them without opening to my lord president.

My Lord President says, he locked them up, unopen'd, in a close cabinet in his closet-room, where nobody comes; there they were that night, and the next day he carried them intire to the king, and some of them were read by the king, in the presence of my lord president; and they were all taken away by his lordship, no more nor no less; and my lord president brought them all to the cabinet council, where they were read, and were delivered to my lord Sydney.

My lord Sydney swears, these papers now produced, are the same papers he had from my lord president; and my lord president swears, that they are the same he received by Billop from my lord Nottingham, and my lord Sydney marked them.

So that there can remain no doubt of these being the same papers, that were contained in the packet, that was taken out of the bosom of Mr. Ashton.

Then, as to the matter of the papers, I think it is plain, beyond all contradiction, that the import of them is treasonable: they shew a design of invading the kingdom by a foreign force, and of deposing the king and queen from the government, and of setting the late king upon the throne.

It is agreed, as it is mentioned at a conference between several noblemen and gentlemen, that were of the Whig and Tory party, as they call them, that the late king was to be restored, though by a French power.

It was impossible for them to effect it by going plainly to work, and saying in plain words, the French should invade us. It was to be done in this manner.

The French king must pretend by all means to be our friend, and a mediator betwixt the late king and the people of England, and this was out of design plainly to get a party of the kingdom to join with them, the most credulous and inconsiderate sort of people, who, when they shall be seduced into a belief of the French king's great kindness, it was not doubted but there would be a conjunction between them and the French forces, to restore the late king.

And to procure such a persuasion in the people, the French king was to shew himself kind to the English Protestants, to appear and act another part than he had formerly done; he was to permit them the exercise of the Protestant religion, thereby to persuade many, that his persecution of his own subjects, the hugonots, was not out of any aversion to the protestant religion, but only to their antimonarchical and resisting principles.

Then an inconvenience is to be removed; for they complain, that they are too full of

* *Q. M.* Does this shew that the Lord Chief Justice took no Notes? It has been said that Pratt, Lord Ch. J. of B. R., never took Notes. See *Laver's Case*, A. D. 1722, *post*.

bigotry at St. Germain's, and too bare-faced: for they make an open profession of Popery, and speak truly what they do intend; but say they, if they will have the design take effect, they must be more close and secret; for the folly and bigotry at St. Germain's was a very great obstruction. Therefore, they proposed that some persons might be substituted as agents to correspond here, that understood the temper of the nation, and what would easiest prevail with the people: and a model was to be framed at St. Germain's; the Protestants are to be seemingly caressed, seven or nine to be of the late king's council, that so we might believe, that he was ours in interest again, and that we have a relation to him.

And if things were carried with such cunning and subtlety, they hoped to delude a great many people over into the interest of the late king; but, if they went bare-faced, it would cause such great jealousies, that they must totally despair of success.

Yet they did not hope by these artifices to obtain so many friends here, as might have been sufficient to accomplish their design; and therefore they must have recourse to a foreign force, particularly a French force. For says one of the papers, 'Use foreigners to expel foreigners;' that is, use French to expel Dutch foreigners, who are our allies, and are falsely accused by them to have trampled upon the rights and liberties of the nation.

There is one argument used to encourage people to assist the French in the invasion of their own country, which I cannot omit; namely, That as soon as the French with a considerable expence of men and money, had restored the Protestant religion, the late king to the crown, and the people to their liberties, that he would withdraw all his forces, and reap no profit or advantage by his success. I must confess, this carries so little of persuasion in it, that it is ridiculous to think thereby to impose upon any number of men; but notwithstanding the weakness of their arguments, it is apparent they were in good earnest; the papers give an Account to the French, in what state and condition our forts were, Portsmouth not manned with above 500, and Gosport how weakly fortified.

It was a happy juncture between this and the first of March, when advice is given to make use of the opportunity: for men cannot give, but men may use opportunities, and something was to be done forthwith, and the goods must be got in readiness, particularly linnen, and the copper are mentioned, which are mysterious and dark expressions, and you may put a construction upon them as well as I; for they are written in a style of trade, as if they were a correspondence between two tradesmen, and the linnen and the copper are ordered to be brought before the 10th of March.

But however obscure some of these expressions are, there are others that are more plain, That the French Fleet must be out in April at farthest, and are to come before the conjunction

between the English and the Dutch, and Jennings, Strickland, or Trevannion are to come from St. Malo's in one night, and to fight the English Fleet in the chops of the channel, and not to come so high as Beachy, where they came the last year.

And there is an account given, in what condition and state our navy was, how many ships, what rates, how manned, and who the officers; and then as the French were to be in readiness to come in April, so they say our fleet was not to be out till June.

Gentlemen, there are a great many other particulars; but these are enough, nay half of them were enough to make any man guilty of treason, that was concerned in them, or that had a hand in carrying or making use of them.

Besides, there are other letters which can import nothing, but the writer was of the late king's interest; one directed to Mr. Redding, the other to Mrs. Redding; and these were to go to France, to let them know how zealous he was in his duty, and how the interest of the young master increased. The Letters have these expressions; "That though the family were decreased, yet our interest is increased, which is yours, and I speak in the plural number, because I speak the sentiments of my elder brother, and the rest of our relations, and desire them to believe they were zealous and cordial in their duty to Mr. Redding." Now what interpretation you will make of this, I will leave to you.

Then there is another letter to Mrs. Charlton, and another to Mr. Jackson, and divers other things that have been read, and among the rest, have been read the heads of a declaration at large, shewing what should be done, and what methods should be taken in order to the restoring the late king, and deposing this.

And there is also mention made in a paper, how divers persons, who were to be pardoned, as particularly, all justices of the peace actually in commission, are not to be excepted; outlaws are to be pardoned; chimney money to be taken away; and all that come in within one-and-twenty days, are to be forgiven.

So that it is plain these letters import a design to depose the king and queen, and the kingdom to be invaded by foreigners; only a little to colour the matter, nor to lose the Protestant interest altogether, there was to be 5 or 6,000 Swedes to be made use of in the invasion.

Gentlemen, if there was a design of an invasion, be it by Papists, or by Protestants, if any act was done tending thereunto, it is high-treason within the statute of 25 E. 3. For purposing and intending to depose the king and queen, manifested by any overt-act, hath been always held to be high-treason.

This, gentlemen, is the sum and substance of the evidence that has been given against the prisoner at the bar.

Mr. Ashton says for himself, it is true, saith he, my design was to go to France. I was so unfortunate as to have the papers taken about me. I did take them up; but says he, it is

not at all proved that any one of the papers that are now produced are my hand; which is true: There is no such proof.

The next thing is, that Mr. Ashton being asked, What occasion he had to go to France? he says, he had formerly a relation to colonel Worden, and did transact, and had the management of his affairs, which were very great. Col. Worden died half a year ago, and he enjoined him upon his death-bed to go into France about settling some accounts of his, and he was desired by the family of col. Worden so to do.

This Mr. Ashton alledges; but he has not proved it. It is very strange, that if Mr. Ashton was to go to France to negotiate that affair for col. Worden's family, none of that family should be produced to prove, that col. Worden gave him such directions; or that the family desired him to go into France upon that account.

Then Mr. Ashton hath endeavoured to give another reason for his voyage into France: he affirms, he had some affairs of his own with relation to the late queen; he was concerned for her, and she did owe monies here, and he paid several debts to tradesmen, particularly 400*l.* she owed to the coach harness-maker; and he having paid it, went over to reimburse himself: The tradesman was produced, and he says, Mr. Ashton did pay the money a year ago; but whether Mr. Ashton had effects from the late queen, or paid it out of his own pocket, does not appear. Mr. Ashton says, he paid it out of his own pocket, which is very extraordinary, that he should be so kind to pay what he was not obliged to pay, and have no security to reimburse himself.

So that, gentlemen, you had best consider whether there be any thing at all said or proved, that can justify Mr. Ashton's going to France. or whether there be any good reason offered for it.

Then Ashton has called witnesses to prove, that he was always a Protestant, though he did live in a Popish family, where they did encourage Papists and discountenance Protestants; for which he had the ill-will of those he did depend upon.

Gentlemen, all that is agreed, and it is not a question in this case, whether Mr. Ashton be a Protestant, or a Papist; but the question is, Whether he be guilty of high-treason? From which the being a Protestant does not secure a man.

But, Gentlemen, if Mr. Ashton had no knowledge upon what design the other persons were to go into France, though he had actually gone into France, it had been a crime in this juncture of affairs, yet not high-treason; but to go into France, and carry a treasonable scheme of a design, and project of an invasion, that is treason.

Now the question is, Whether Mr. Ashton went with such a purpose or not, you are to consider; I would not lead you into any strain of the evidence, but only state it how it stands. It is plain he was concerned all along in hiring

the smack, and as the king's counsel observed to you, the price was something extraordinary; they were to pay 100*l.* for the voyage, to which was added some encouragement to the woman, that if she performed this voyage well, she might get 1,000*l.* before Lady-Day, and the money was paid by Mr. Ashton, and he was taken aboard the vessel.

Mr. Ashton was much concerned to secure the papers, by taking them out of the place where they lay upon the ballast under the quarter-hatches; and after they were taken out of his bosom, he was very importunate, and so often, with captain Billop to throw them over-board. And why should he be so earnest and concerned, unless he very well knew, and was acquainted with the contents of those papers? And he gave one of the seamen 2*s.* 6*d.* to say, they were bound for Flanders: unless it was a matter of great importance, he went about, and that was not fit to be known, why should he deny it, or labour to have it concealed? And 100*l.* to be paid for this voyage, was, upon a joint account, as well for my lord Preston, as for Mr. Ashton and Elliot; Mr. Ashton did pay the money, and he does not make it appear whose it was.

Gentlemen, it rests upon you to consider the evidence you have heard, whether it is sufficient to induce you to believe Mr. Ashton was going into France with these papers to carry on the design of deposing the king and queen, and invading the kingdom:* if you are not satisfied in your consciences that he is guilty, then find him not guilty: on the other side, if you are satisfied that he is guilty, I do not question but you will find him so.

L. C. J. *Pollexfen.* Look you, gentlemen of the jury, my lord has rightly repeated and stated the evidence to you; I shall only say but a very few words to it. Mr. Ashton, as at first he did, so in his defence has complained of a very speedy trial, and would insinuate something of favour that he might find for that reason. It does appear he had notice of his trial sufficient, and had time enough to prepare for it: but there is one thing extraordinary has happened to his advantage, which I would desire may be taken notice of. If he had been tried on Saturday, perhaps he had had more reason to complain than now he has; for he has now (and you see he uses it, and wisely enough too) the advantage that happened to him upon my lord Preston's trial; and has had time since Saturday to prepare for this day's work; so that there is no hard point upon him as to that matter, but he has had pretty good fortune therein.

Next, he does insinuate, that he is a Protestant. Gentlemen, the law does not distinguish between a Protestant traitor, and a Papist

* See in vol. 9, pp. 845, 846, what Roger North, proposing to liken this Case to that of Algernon Sidney, and to justify the decision in the latter, says. Roger North plays the advocate throughout.

traitor; if he has committed such an offence, as by the law is high-treason, the law does not distinguish, nor may we. And Protestants may serve Papists designs, though they do not directly intend it. Therefore the evidence to prove him a Protestant is nothing before you; for the matter is only, whether he be guilty of this crime or not.

In the trial of my lord Preston, then the labour was, that my lord was not the man that was concerned, as the bearer of this packet of letters or writings wherein the treason is contained; but then it was Mr. Ashton, the packets were found about him; but now it is not Mr. Ashton, but my lord Preston, and this is now the question before you, that he stands upon. But if so be they were all concerned in the carriage and transporting of this business, then they are all alike guilty of treason, and therefore they cannot shuffle it from one to another.

Now there appears some reason why they would not all agree to be tried together; for now it is but turning it from my lord Preston upon Ashton, and Mr. Ashton upon my lord Preston, and Elliot upon either of them, and so by this means all might escape, if this were sufficient to serve their turn.

But the question before you is, Whether all these persons are not all in all equally concerned? and it is the evidence that must be your guide and ours: for it is not Mr. Ashton's affirmation, that he had business to go into France, and he happened unluckily to fall into these men's company, that will be a sufficient excuse, unless he prove it.

It had been an easy matter for him to have proved, if he had been going into France upon business for col. Worden; but at length that is turned off, and then the pretence for going is, to recover some money he had owing to him there, and that he had payed for another person. Had he papers of instructions of this kind? Had he any one witness of this thing?

The merchandize that he carried out with him is of another import. Where were the notes or bonds that he was to recover? Where is the account that he had to make up with any body beyond sea? There is no manner of evidence of any such thing.

Next, Gentlemen, do but consider, if the man were so innocent as he would insinuate, as if he had not gone with the rest upon this errand, how came the man to have so heavy a concern upon him? Why should he go to take up these papers, if they were not his brats? Why should he clap them into his bosom, if he knew nothing what was in them? Why was his concern so great to have them thrown over-board?

Gentlemen, if you expect that the hearts of men should be proved otherwise, than as men guess by one another's meanings, by their actions, it is impossible to convict any man of a crime; for if his own affirmation shall be a defence, he will never want a defence to keep himself from being convicted; but that is not

what the law gives credit to; it must be evidence and proof that you are to judge upon. But of all he pretends to, he proves nothing.

How came he acquainted with my lord Preston? Sure he was a man sufficiently known in the world! Why should he go with him and Mr. Elliot? Are they not all known? Are they not persons of the same disposition, and much in the same employment?

He had been taken a little before, he says himself, and was hindered from going; and he had strange ill luck, if there was nothing else in the business than what he pretends.

Gentlemen, in short, if you do find by the evidence, that he was going upon a good and an honest design, and that he knew nothing of the danger that was in these papers, and that these persons were in by reason of these papers, and yet would go about to have these papers concealed; and endeavour to have them thrown away, without knowing what was in them: these are evidences that will be good for you to go by, if you have any such; but to take his affirmation, because he says it, when he proves nothing, that is no evidence to go by.

I leave it to you, as my lord has done. If you are satisfied upon the evidence that he is guilty, I doubt not you know, and will do your duty, and will find him so; and if you have no such evidence, or any to prove the contrary, that he is not guilty, then you ought to find him so too.

Ashton. I beg your pardon for one word.

L. C. J. Holt. What would you say?

Ashton. My lord, I shall reckon it a particular favour, if you will pardon me one word, after your lordship has given the charge.

L. C. J. Holt. Well, what say you?

Ashton. I think with submission, that there is no proof, I knew, or was privy to the contents of any of these papers.

L. C. J. Pollexfen. Pray, Mr. Ashton, shew any man any reason, if you can, why did you go down and catch up these papers, if you did not know what was in them? They might be for your advantage to be shewn, for any thing you pretend to know.

Ashton. I did it for my lord Preston's sake, whose hand was proved, and he stands convicted as the bearer of those papers.

Just. Eyres. But you forgot one thing that was plainly proved, Mr. Ashton, that when you importuned capt. Billop to throw away the papers, you used this as an argument, 'It would do him no good to injure three honest gentlemen.'

Ashton. I did not say so, my lord, that I know of, though indeed he has sworn it.

L. C. J. Holt. Look you, Mr. Ashton, you have been heard as long as you did desire to speak, and were asked over and over again, whether you had any more? You are not now saying any new matter; if you could urge any thing that had been omitted, which made for your advantage, I believe the court

would indulge you, though it be against the course.

Ashton. My lord, I say there is nothing under my hand, there is no privity proved. Does supposition condemn a man? And is there any thing but supposition against me? There is not my hand proved in any of the papers. I beseech your lordship and the jury to observe that.

L. C. J. Holt. Your being in the company, and being so concerned, and importunately endeavouring to have thrown them overboard; the hiring the vessel to go with these treasonable papers to an enemy's country, and the papers found about you, is fact proved, and is left to the gentlemen of the jury to consider of.

Ashton. But does all this amount to more than suspicion?

L. C. J. Holt. Look you, Mr. Ashton, if you speak after we have charged the jury, you will give us an occasion of speaking to answer you; the gentlemen of the jury are men of understanding; they have very well observed the evidence, and I perceive they have been very extraordinary intent upon it; they will be able to make a right judgment, no question of it.

Ashton. All that I desire, is; there is nothing proved upon me, of my knowing what was in these papers.

Just. Eyres. And there is that which is very considerable too, that it is plain, what you say about col. Worden's account, is but a pretence; for when you were searched, there was not one paper, nor one bit of account found about you, nothing but this bundle of treasonable papers and letters.

Ashton. My lord, I humbly beg you will observe what is for me, as well as what is against me.

L. C. J. Holt. Gentlemen of the jury, do you think you shall stay out any time? The court desires to know it, because they will order themselves accordingly.

Juryman. My lord, we do not know till we come together.

L. C. J. Holt. Nay, take your own time, only the court would comply with your convenience in the adjournment.

[Then the Jury withdrew, and the Court adjourned for half an hour, and when they were returned, the Jury came in to give their verdict, and being called over, answered to their names.]

Cl. of Arr. Gentlemen, are you all agreed of your verdict?—*Jury.* Yes.

Cl. of Arr. Who shall say for you?

Jury. Our foreman.

Cl. of Arr. John Ashton, hold up thy hand. [Which he did.] Look upon the prisoner; how say you? is he guilty of the high treason whereof he stands indicted, or not guilty?

Foreman. Guilty.

Cl. of Arr. What goods or chattels?

Foreman. None that we know of.

Maj. Richardson. Look to him, he is found guilty of high treason.

Cl. of Arr. Then hearken to your verdict, as the court has recorded it, You say, That John Ashton is guilty of the high treason whereof he stands indicted, but that he had no lands nor tenements, goods nor chattels, at the time of the high treason committed, nor at any time since, to your knowledge, and so you say all?—*Jury.* Yes.

L. C. J. Pollexfen. Gentlemen, I think truly you have gone according to your evidence, which the law requires you to do, and that it is which will preserve us all. And though it be truly a thing that falls hard upon the particular men that are concerned in such things; yet notwithstanding, we must have more consideration of the general good and preservation, and the support of the government, and that the law have its due course, than of any particular man's case, as to the hard point of it: we must look to these things, or there will be no living in the world.

Sir W. Hedges. My lord, we humbly desire of your lordship, that we may be dismissed from further attendance this sessions.

L. C. J. Pollexfen. Aye.

Cl. of Arr. Gentlemen, you are dismissed, and the court thanks you for your service.

[Then the Court adjourned for an hour, and then the Lord Mayor and Deputy Recorder, with several of the Justices and Aldermen, returned into the Court, and after proclamation for silence, order was given to bring the lord Preston and Mr. Ashton to the bar, which was done, the lord Preston standing without the bar, and Mr. Ashton within.]

Cl. of Arr. Sir Richard Grahme, hold up your hand. [Which he did.] John Ashton, hold up your hand. [Which he did.] My lord Preston, you stand convicted of high treason, for conspiring the death of the king and queen's majesties, for adhering to the king's enemies, and endeavouring to subvert the government: what can you say for yourself, why the court should not proceed to give Judgment against you of death, according to the law?

Lord Preston. It is true, my lord, the jury have found me guilty of the treason assigned in the indictment. My lord, it is a treason of a very heavy and black nature; it is of such a nature, that if I had been conscious to myself to have deserved, I should be very willing to undergo that judgment that is like presently to pass upon me. It is to endeavour to bring in the king of France to conquer and invade this kingdom; it is a thought I always abhorred; I love my religion, my family, my country too well to attempt or endeavour any such thing; I must appeal to your lordship, though now perhaps it is too late, whether the treason that is laid against me has been perfectly proved; for in the case of proving hands, and particularly in the case of colonel Sidney, it was disallowed that comparison of hands should be evidence; there ought to be at least one, if not two, evidences to prove the writing of it. My

lord, I know this is too late, I should have offered this to the jury before, but being in the crowd, and in great disorder by standing so long, I had not strength or ability enough to urge it as I should. I have nothing more to say in the case, but submit to that judgment that the law has assigned.

Deputy Recorder. My lord Preston, your lordship knows the proceedings of the law in such cases; there is no averring against the verdict of the jury; they have found your lordship guilty, and the law says, that judgment must be given upon you according to that verdict.

Lord Preston. Mr. Recorder, I do not aver against the verdict. I own it is too late; I should have offered it before, and I must submit to the judgment of the law.

Cl. of Arr. John Ashton, hold up thy hand. [Which he did.] You are in the same case with the prisoner last before you. What can you say for yourself, why judgment should not be given against you to die according to law?

Ashton. My lord, I would humbly desire I might have a sight of my indictment; I have some reason, perhaps, to believe that I am found guilty upon an erroneous indictment; and if it be so, I would desire to have counsel to argue the errors of the indictment.

D. Recorder. You have heard it twice read in English and once in Latin, and that is all that is allowed to any one in your case; I never knew the record of any indictment shewn to any prisoner at the bar.

Ashton. Suppose there be any error in it?

D. Recorder. I am not to suppose any such thing; if there is any, it has been read to you, assign it, and the court will consider of it.

Ashton. If I can assign the errors in the indictment, may I have the advantage of it then?

D. Recorder. If there be errors, you will have the advantage of them, if you will assign them; if there be none, you can have none.

Ashton. Then I say, if there be words in the indictment, that there are no such words in nature, then, Sir, I am told it is a vicious and erroneous indictment, and that is enough to viciate the indictment.

D. Recorder. No such words in nature! It is hard to tell what you mean by that; perhaps there are terms of art in the law, which, though you are not acquainted with, we are.

Ashton. Then there are such words in nature.

D. Recorder. That is an insensible expression, 'words in nature!'

Ashton. I am informed that even a letter in an indictment is enough to viciate it, or if it be false Latin, that will make it an erroneous indictment.

D. Recorder. No; that is not so; but if you will tell me what that letter is, I'll tell you what I say to it; it may, or it may not be material.

Ashton. We know it was lately disputed in a case of this nature at this place, and I am in-

formed the court were of opinion, if it had been in the body of the indictment, it had been an error.

D. Recorder. If you please to tell me wherein the error in your indictment consists, I may be able to give you a good answer to it, or you will have the advantage of it.

Ashton. I say it consists in this; the word *Cymba* is written with an S in the indictment, whereas it should be with a C.

D. Recorder. How do you know it?

Ashton. It is no matter how I know it; I have some reason to know it, it may be.

D. Recorder. Mr. Hardesty, look upon the record.

Ashton. With submission, that is an error, for there is no such word as *Cymba* with an S.

Cl. of Arr. It is a long indictment; will you please to ask him whereabouts it is?

D. Recorder. Mr. Ashton, will you tell me where it is written?

Ashton. In the indictment, when you come to speak of *Cymba* a boat.

D. Recorder. By the sound I cannot distinguish whether it be S or C.

Ashton. Sir, I hope you will do me the justice to examine the indictment itself.

D. Recorder. The clerk is looking upon it: how is it, Mr. Hardesty? is it with an S or a C?—*Cl. of Arr.* It is with a C.

D. Recorder. The clerk has read it, and he certifies me it is in both places with a C, which is true Latin.

Ashton. Is it in all places with a C?

Cl. of Arr. I have looked in two places, and it is right; I'll look further, if you please.

Ashton. Pray do. [Which he did.]

Cl. of Arr. It is with a C in all places.

D. Recorder. The clerk tells me it is the same, and right in every place, and he has looked over all the indictment as to the matter.

Ashton. Then, Sir, I submit to it.

D. Recorder. Make proclamation for silence. [Which was done.]

D. Recorder. My lord Preston, or rather sir Richard Grahme, and Mr. John Ashton, ye have been indicted, arraigned, and convicted of high treason against their present majesties king William and queen Mary, whom God preserve. Ye have had a long, a fair, and favourable trial, as any persons that ever have been tried at this bar.

The Jury that has passed upon your lives and deaths has convicted you; and the Court are now to do their last act, which is to pronounce that Sentence that the law does inflict upon such crimes as ye stand convicted of.

It is a great trouble to me to pronounce a Judgment that is so heavy upon you; but I must say, the evidence that has been given against you was so clear, and, I suppose, not only convincing to the twelve men that tried you, but to all bystanders, that I can do it with that satisfaction that becomes one who is entrusted with the king's justice, that the law may obtain, and that there should be no interruption of justice. And the Sentence that the

law has declared should be pronounced in this case, is this :

‘ That ye do respectively go to the place from whence ye came ; from thence to be drawn upon a sledge to the place of execution, to be there hanged up by the neck, to be cut down while ye are yet alive, to have your hearts and bowels taken out before your faces, and your members cut off and burnt. Your heads severed from your bodies, your bodies divided into four quarters, your heads and bodies respectively to be disposed of according to the king’s will and pleasure ; and the Lord have mercy upon your souls.’

Then the prisoners were conveyed away to Newgate, the place from whence they came. Lord Preston obtained a pardon ; but Mr. Ashton was executed on the 28th of January.

The queen having remitted that part of the sentence, as to drawing and quartering, he went in a coach, with two divines, to Tyburn, where he was executed, and his body given to his relations to bury. He delivered this Paper to the sheriff :

Mr. Sheriff ; Having observed that the methods of making Speeches at the place of execution, were not always attended with the designed successes ; and thinking it better to employ my last minutes in devotion, and holy communion with my God, I have prepared this paper to leave in your hands, as well to assert my principles, as to testify my innocency.

As to my religion, I profess, by God’s grace, to die in the faith in the which I was baptized, that of the Church of England, in whose communion (nothing doubting of my salvation, through the merits of my Saviour) I have always thought myself safe and happy. According to her principles, and late much esteemed doctrine (though now unhappily exploded) I have regulated my life ; believing myself obliged, by my religion, to look upon my rightful, lawful prince (whatever his principles were, or his practices might be) as God’s vicegerent, and accountable, (if guilty of maladministration) to God only, from whom he received his power ; and always believing it to be contrary to the laws of God, the Church, and the realm, upon any pretence whatsoever, to take up arms against him : and let all the world take notice in this belief I die. But I have more particular obligations to the king, my master, whom I had the honour to serve, and received many signal favours from him, for 16 years past ; so that gratitude (a thing not much esteemed at this time) as well as duty and religion, commanded the utmost service I could pay him. And when I add these considerations, that we were born his liege subjects ; that we had solemnly professed our allegiance, and often confirmed it with oaths ; that his majesty’s usage, after the prince of Orange’s arrival, was very hard, severe, and (I may say) unjust ; and, that all the new methods of settling this nation, have hitherto made it more

miserable, poor, and more exposed to foreign enemies ; and, that the religion we pretend to be fond of preserving, is now, much more than ever, likely to be destroyed : there seemed to me no way to prevent the impending evils, and save these nations from poverty and destruction, but the calling home our injured sovereign ; who, as a true father of his country, has (notwithstanding all his provocations and injuries,) a natural love and tenderness for all his subjects. And I am so far from repining at the loss of my life, that had I ten thousand, I should rather think myself obliged to sacrifice them all, than omit any just and honest means to promote so good and necessary a work. And I advise and desire all my fellow-subjects to think of their duty and turn to their allegiance, before the severe judgments of God overtake them for their perjury and rebellion : but certainly the good and interest of these nations, abstracted from all other considerations, will ere long convince them of the necessity of doing it.

Having thus frankly declared my principles, I know the inference will be, that I have acted accordingly, and consequently, that I am now justly condemned ; but, as I ingenuously own the inference, so I as positively deny the consequence ; for whatever my inclinations or actings have been, yet, as to the matter I was sentenced to die for, I declare myself innocent. And I will appeal, even to the judges themselves, whether or no, upon my trial, there appeared the least proof that I knew a tittle contained in the papers ; but presumptions were with the jury thought sufficient to find me guilty, though I am told I am the first man that ever was condemned for high treason upon bare suspicion or presumption ; and that contrary to my lord Coke’s, and other eminent lawyers’ opinions. The knowledge of my own innocency, as to the indictment and charge against me, was that that armed me with so much assurance, and occasioned my casting my life upon the first twelve men of the pannel, without challenging any. But though I have, I think, just reason to complain of the severe charge given by the judges, and hard measure I have received ; not to mention my close imprisonment, the hasty and violent proceedings against me, nor the industry used in the return of fitting persons to pass upon me ; the denying me a copy of the pannel, &c. Yet, as I beg for pardon and forgiveness at the hands of God, I do most heartily pray for, and forgive them, and all my enemies, all the world ; nay, even that judge and jurymen who did so signally (contrary to common justice) expose themselves to destroy me. But let the will of God be done, I rely wholly upon his mercy, and the merits of my blessed Saviour, for salvation ; I do cheerfully and entirely resign myself into his hands, as into the hands of a faithful Creator, in sure and certain hopes of a happy resurrection.

Bless, protect and strengthen, O Lord God, my good and gracious king and master ! In

thy due time let the virtue, goodness, and innocency of the queen, my mistress, make all their enemies blush, and silence the wicked and unjust calumnies that malice and envy have raised against her. Make her and these nations happy in the prince of Wales; whom, from unanswerable and undoubted proofs, I know to be her son. Restore them all, when thou seest fit, to their just rights, and on such a bottom as may support and establish the church of England, and once more make her flourish, notwithstanding what she hath received of late from her prevaricating sons. Forgive, forgive, O Lord, all my enemies; bless all my friends; comfort and support my dear afflicted wife, and poor babes; be thou a husband and a father to them; for their sakes only I could have wished to have lived; but pardon that wish, O good God, and take my soul into thy everlasting Glory! Amen.

J. ASHTON.

A TRUE COPY of part of that PAPER, which Mr. Ashton left in a Friend's hands; Together with a LETTER in which he sent it enclosed.

[The Paper begins with the Speech already published; immediately after which he adds:]

Thus much is contained in the Paper that I design to leave with the sheriff. But being suddenly to give up my accounts to the Searcher of all hearts, I think it a duty incumbent upon me to impart some things farther, which neither the interest nor iniquity of these times will, I conclude, willingly bear the publication of, and therefore not fit to be inserted in the sheriff's paper.

Some time after the prince of Orange's arrival here, when it was expected, that pursuant to his own declaration, and the king's letter to the convention, an exact search and enquiry would have been made into the birth of the prince of Wales, there was a scheme drawn up of that whole matter, and of the proofs that were then, and are still, ready to be produced, to prove his royal highness's legitimacy; but no public examination being ever had, and the violence of the times, as well as interest of the present government, not permitting any private person to move in it, those papers have ever since lain by: But it being now thought adviseable by some to have them printed and published, and (as at first they were designed) addressed, at their next meeting, to the lords and commons, entreating them to enquire into that weighty affair, and to call forth, examine, and protect (for who else dares to appear) the many witnesses to the several particulars therein offered to be legally proved, &c.

I was ordered to carry those papers to the king my master, for his view, that his leave and approbation might go along with the desires of his good subjects here; and they being taken with me, with some other papers of accounts, &c. in a small trunk, and amongst my

linnen, and other private things of my own, and not in the packet, (my lord Preston being altogether a stranger to the whole proceeding,) by this means fell into the hands of our present governors; who though they wisely waved the producing them as evidence at my trial, yet have I just reason to believe my greatest crimes were contained in them; and do therefore conclude and hope, that I only am designed to be sacrificed, who only knew of them. Nor am I surprized at it, since nothing, I think, can be more prejudicial to some persons present interest, than the exposing of those papers to the public, which will set that pretended mystery of darkness in so clear a light, that all mankind must be convinced of his highness's being born of the queen, and of their wickedness, who have maliciously and designedly asserted that innocent prince to be an impostor. The love and compassion that I have for my native country, as well as charity, obliges me humbly to implore Almighty God to be merciful to it, and not to charge this great sin to the public account, and that we may not farther provoke his justice, by our wilfully continuing in error and mistake. I beseech him to put it into the hearts of the lords, &c. at their next meeting, to examine into that whole matter, and (if before that time this be published) to enquire after, call for, and if possible, retrieve those papers that were taken with me; whereby the obstinate will most certainly be convinced, and the ignorant informed, the doubtful confirmed, the eyes of all opened, and a sacred most important truth made apparent to the whole world.

What I have next to impart, is not less material, &c.

[But I do not think it a proper time to publish what follows next, and therefore, according to the will and desire of my dead friend, expressed in his following letter, it is reserved to a fitter opportunity; and shall now only insert what he wrote to me relating to Mr. Elliot.]

But I must not end this Paper till I have done one act more of justice, as well as charity, in behalf of my fellow sufferer, Mr. Elliot, who was, as I do most sincerely believe, altogether ignorant, not only of the contents of the papers, but even of the papers themselves, and no way concerned, but as a passenger; and yet, if Providence had not prevented our being all tried together, as was intended, that innocent gentleman had most certainly shared in our fates; for the proofs, even at my trial, lay stronger against him than myself: for captain Billop did then, upon oath (unnecessarily, I think) declare him to be much more concerned and importunate than I was, to have the packet thrown overboard; and yet singly from my being concerned, and speaking to him on that subject, a presumptive evidence (sufficient, as it proved, with that jury to find me guilty upon) was drawn, that I knew what was contained therein. But I do most heartily forgive them, and pray to God, that this poor gentleman, by gaining of time,

may escape better, and that his innocent blood may not be shed: and I hope these words of a dying man (though no legal proof) may have some weight with an impartial, conscientious jury (if such a jury he can get,) whenever he is brought to his trial.

JOHN ASHTON.

This Paper, &c. came inclosed to me from Mr. Ashton, before his execution, in the following Letter:

"Sir; Knowing your friendship and fidelity, to your, and your only, as unto safe and secure (though distant) hands, I recommend the inclosed papers; what chiefly relates to myself, being the first part, I design to leave with the sheriff; nor shall I be anxious about his disposal of it: but the following paragraphs, that concern the prince of Wales, and ———, I beg you to preserve as jewels, and publish them, either part or all (chiefly that about the prince), whenever time or occasion seems to permit or require. And as to the fitness of either, you

may be pleased to consult A. B.'s advice; I doubt not but sooner or later they will all be useful: and that you may the more value them, I do most solemnly protest, I have been as careful in what I have asserted for truth, as if I were now at God's dreadful tribunal; where I expect suddenly to appear, and by his mercy hope to hear that ravishing sound, Come, ye blessed, &c."

What relates to Mr. Elliot, though I design to declare as much to some, who at his trial may give it in evidence, yet I thought it just to leave a record of his innocence under my hand.

I have nothing to add, but to request your prayers, that God, of his infinite mercy, would support and strengthen me in my last moments, and take to himself, Sir, yours,

Newgate, Jan. 27, 1690-1. JOHN ASHTON.*

* As to what passed between Bishop Lloyd and Ashton, shortly before his execution, see p. 160, of the present Volume.

366. *Proceedings in Parliament upon the Case of JAY and TOPHAM; and the Defence made by Sir Francis Pemberton and Sir Thomas Jones, for their Judgment given therein: 1 WILLIAM & MARY, A. D. 1689.**

MR. TOPHAM,† Serjeant, attending the House of Commons, having by his Petition complained, That he had been a great sufferer by several prosecutions at law for executing the Orders of the House; and that having pleaded those Orders to the jurisdiction of the Court of King's Bench, his pleas had not been allowed, but judgment was given against him: the House referred the examination and consideration of this matter to the Committee of Privileges. Accordingly the Committee met and examined the matter.

July 6, 1 Will. and Mar.

Col. Byrch reported the fact as it appeared to the Committee, with the opinion of the Committee thereupon, with which the House agreed, in these words:

* With respect to Privilege of Parliament, see in this Collection, the Cases of Shirley and Fagg, vol. 6, p. 1121; of the Earl of Shaftesbury, on a Habeas Corpus, vol. 6, p. 1269; of Richard Thompson, vol. 8, p. 1; of John Wilkes, A. D. 1763; of Brass Crosby, A. D. 1771; and Flower, A. D. 1799, with the notes, books and cases there referred to. See, also, the Speech of Lord Erskine in the House of Lords, May 7th, 1810, 16 Cobb. Parl. Deb. p. 850.

† Concerning this Topham, see an Extract from North's 'Examen,' given in vol. 8, p. 12, of this Collection.

Resolved, "That the House doth agree with the Committee, That the Judgment given by the Court of King's Bench in Easter Term, 34 Car. 2, Regis, upon the Plea of John Topham (at the suit of John Jay) to the jurisdiction of that court; and also the judgments given against the said Mr. Topham, at the suit of Samuel Verdon, John Hiliard, Thomas Staples, Richard Blyth, John Nelson, Thomas Herbert, Nathaniel Reading, and Richard Harnage, are illegal, and a violation of the privileges of parliament, and pernicious to the rights of parliament."

The House being informed, That sir Francis Pemberton and sir Thomas Jones were Judges of the King's Bench at that time, ordered them to attend upon Wednesday next following.

July 10, 1689.

The House being informed, That sir Francis Pemberton and sir Thomas Jones attended, pursuant to the Order of the House; sir Francis Pemberton was first brought in, and Mr. Speaker spoke to him to this effect:

Mr. Speaker (Mr. Henry Powle). The House has been acquainted, there was an action brought in the King's Bench in Easter Term, 34 Car. 2, by one Jay against Serjeant Topham. To which action he pleaded the jurisdiction of this House; and that it proceeded to a demurrer, and the Plea was over-ruled by you as Chief Justice; so the House has sent

for you to know upon what ground you did it.

Sir Francis Pemberton. Sir, I know nothing of this action, I have been out of the Court now six years this vacation. If I saw the pleadings, it may be I might give you some account of it, but I cannot remember so many thousand actions as were brought at that time. But if you will let me know what the charge is, I do not doubt but I can give you a good account of it. You say, Sir, he pleaded the jurisdiction of this House.

Mr. Speaker. That is, there was a Plea to the jurisdiction of the Court of King's Bench, That it was done by Order of this House; so it concerns the jurisdiction of this House.

Sir Francis Pemberton. This is quite new to me, for I know not what I was sent for. You were pleased to summon me to attend, but I did not know for what, nor do I remember any such action brought by Jay; I remember only an action was brought by Verdon* against Topham. And I remember there was a motion made to us for a new trial in the case, where there was 500*l.* damages given. And we did give them a new trial, for we thought it monstrous and unreasonable damages.

Mr. Speaker. There were several actions brought, but that which the House would be informed of, is the action that was between John Jay and John Topham.

Sir Francis Pemberton. Under favour, I can say nothing to this action; but this I can say, if the defendant should plead he did arrest him by the command of this House, and should plead that to the jurisdiction of the court of King's Bench (I can say nothing to this particular action, but) I think, with submission, I can satisfy you, that such a plea ought to be over-ruled, and I take it, the law is very clear as to this; but as to what is laid to my charge, with respect to this particular action, if you please to give me some time to look into the records of the court.

Mr. Speaker. The House will consider of it, if you please to withdraw, and then give you their resolution. [Sir Francis Pemberton withdraws.]

Sir Thomas Jones brought in.

Mr. Speaker. Sir Thomas Jones, the occasion the House sent for you is this: They have been acquainted, that in the time of king Charles the Second, in the thirty-fourth year of his reign, there was an action brought by one Jay against Mr. Topham, that then was, and now is, Serjeant of the House of Commons. To which he pleaded, That what he did was by Order of the House, and this he pleaded to the jurisdiction of the Court of King's Bench at that time; they desire to know if you gave the Judgment, and upon what reason?

Sir Thomas Jones. 'Tis so long ago I do not remember it, it is above seven years ago; and I had not notice at all of the cause I was com-

manded to attend you upon; whether I did give any such judgment or no, it will appear by the record itself.

Mr. Speaker. We have examined the officers, and they give us an account, that sir F. Pemberton was chief justice, and you another judge then.

Sir Thomas Jones. I was a judge of the court at that time, but I cannot certainly say, we did give judgment to over-rule the plea; I hope, if we did, it was according to law.

Mr. Speaker. Well, Sir, you may withdraw, if you please. [Sir Thomas Jones withdraws.]

Sir Francis Pemberton brought in again.

Mr. Speaker. Sir Francis Pemberton, the House took notice when you were in before, you said, when an order of this House was pleaded to the jurisdiction of the King's-bench, you conceived by the law it ought to be over-ruled; and that you could give those reasons that would satisfy the House it was so; they expect you should give them now.

Sir F. Pemberton. Mr. Speaker, as to this question concerning this particular case I know nothing; I know not what the pleading was.

Mr. Speaker. The House does not expect any thing of your answer as to this particular case; but you seemed to make your assertion general, and therefore they desire to hear what you can say as to your general assertion.

Sir F. Pemberton. To satisfy the House of all together, I would desire to look into this particular case; for I do not know whether I was judge or not then: if they will give me some time, I will give them an account of the whole.

Mr. Speaker. The House expects to have some account now of what you said, that a plea to the jurisdiction of the court of King's-bench ought to be over-ruled.

Sir F. Pemberton. If they please, since they charge me with this particular case, I will answer to the whole together.

Mr. Speaker. Well, Sir, if you please to withdraw. [Sir Francis Pemberton withdraws.]

He is brought in again.

Mr. Speaker. Sir Francis Pemberton, the House did take notice that you did affirm here, that if an order of this House was pleaded to the jurisdiction of the court of King's-bench, that it ought to be over-ruled, and that you take the law to be clearly so, and that you thought you could satisfy the House in that point. This is a general assertion, and they require nothing as to the particular case; but they do require you, that you would give them your reasons why you maintain this opinion.

Sir F. Pemberton. The question that was put to me by yourself was a new question to me: I heard nothing concerning it; nor did I know what it was that would be put to me. I did tell you my present apprehensions of the case you put; I did not speak of an order of the House in general, but the order that was in this case, of the order of taking him into cus-

* See Verdon's Case in Sir Tho. Jones's Reports, p. 208.

today: that was the question proposed to me. I had no reasons to speak of the orders of the House in general, I can give no account of them; but 'tis *quoad hoc*, whether the order for taking him into custody was pleadable to the jurisdiction? I did apprehend by the law it was not pleadable: if I was understood in any other sense, I beg your pardon, for I spake it *quoad hoc*. The case of Jay it is, I think, which was, it being the order of the House to take him into custody, that being pleaded to the jurisdiction of the court of King's-bench, whether that ought to be allowed or no? Therefore if it be looked upon as if I spake in general, I did not adapt my words as I should, but that is my meaning.

Mr. Speaker. That comes much to the same purpose, under favour: you say, an order of this House being pleaded in this particular case to the jurisdiction of the King's-bench, that order ought to be over-ruled.

Sir F. Pemberton. I beg your pardon, the plea.

Mr. Speaker. Ay, the plea.

Sir F. Pemberton. It must be in cases of like nature. I do not make such a general assertion, (but speak as to this particular case) I do not know how far that may go; and I hope the House won't desire my opinion in that, I did not dream of it; we were upon this single point. And I must tell you, I did not apprehend any such thing would be put unto me. As to the justification of this, I can't, may be, upon the sudden, be prepared with such reasons as will satisfy the House; if they put it upon me to tell my present apprehensions, that is another thing.

Mr. Speaker. I believe the House will be willing to hear your present apprehensions.

Sir F. Pemberton. That may be with some prejudice to the law, I only tell you my present apprehensions: if you will give me time to give you my reasons, I will give you my reasons as well as I can, but you cannot expect I should be furnished with such reasons now, as I may upon further thought. I must premise this to you, that the jurisdiction of this house I do not take to be in question, nor the validity of their orders. I think there is no judge that understands himself, but will allow the privileges of this house; they are the privileges of the nation, and we are all bound to maintain them as much as any member of the house. But the question is here now *de modo*. It is agreed on all hands, the taking him into custody is justifiable; but the question is (*de modo*) whether pleadable by way of jurisdiction, or in bar? And therefore I do not look upon the privileges of this house as at all in question; I only state what I apprehend the state and matter to be. If the house press me to declare my present opinion of it, I must desire I may enlarge myself, if there be occasion for it; it cannot be expected I should be prepared to answer all things.

Mr. Speaker. There is no doubt the house will not tie you up.

Sir F. Pemberton. The question is of the

manner of pleading this order of the house; and the question is, Whether it may be to the jurisdiction of the court, or not? And, under favour, I have always taken it, that such a plea could not be pleaded to the jurisdiction of the court, but it is a good plea by way of bar. Any man that understands the law of England, makes a wide difference between the pleading to the jurisdiction, and in bar: and I must tell you, that I take it, that nothing which is pleadable in bar is pleadable to the jurisdiction, there are several manners of pleading. The justification here is a proper matter of bar, and it is a good justification; but whether the court shall be excluded their jurisdiction, that they shall not know whether this be true or no, is the question? For if this be pleaded to the jurisdiction, there is an end of it. Whether Mr. Topham had such an order or not, cannot be a question upon a plea to the jurisdiction, for the hands of the court are tied up; and therefore whenever there is a plea to the jurisdiction, because the court cannot examine the fact, they swear to their plea.

Now here it is allowed by all people living, I think no judge ever denied it, that the order of this house was sufficient to take any one into custody. No judge, I presume, ever thought otherwise; but if this be pleaded to the jurisdiction here, the hands of the court are closed: so that whether he had such an order or not, is not to be enquired of by the court. But if it be pleaded in bar, so it is a good bar, and he will have as much advantage as any, and all people must allow it is a good bar. Therefore I would pray you that you would consider, that in this case here is nothing of your privileges, nothing of the jurisdiction of this court is called in question, but only the manner of making use of it. There are acts of parliament; he that does any thing under an act of parliament, does it under as high an authority, as he that acts under the authority of this house, for that is the authority of this nation. Yet in those cases, though you are tender that none be prejudiced acting by that authority, yet you have never made any provision that it might be pleaded to the jurisdiction. In the case of the commission of Sewers, where they justify by your authority, and the whole nation's, though you have allowed them as beneficial a way of pleading as can be, yet it is by way of bar, not to the jurisdiction of the court. They say it is done by the authority of the commission of the sewers, but they do not plead it to the jurisdiction. This I did in pursuance of the late act for sewers, and therefore you are to examine it no further. This never was allowed, nor the parliament designed no such thing.

In this case, if Mr. Topham comes and pleads this by way of bar, no court will deny but it is a good justification, he has answered to the thing, and justified what he has done. Your authority will be allowed; but the question is, whether this shall stop the court that they shall not examine it? For any man living may plead such a plea. Now the putting him to

plead this by way of bar, is only to see whether what he hath pleaded is true? As to all other cases, when you allow that where they do any thing in prosecution of an act of parliament, they shall give the general issue in evidence, this is by way of bar, you do in no case oust the court of its jurisdiction. The King's-bench hath a general jurisdiction to examine the things that are done, whether fairly or not. This plea is allowable, and ought to be allowed to any action of trespass to be brought. But, under favour, I must submit it to you: I take the law to be manifestly plain, that by way of plea to the jurisdiction it cannot be, but it ought to be over-ruled, to put him to plead it by way of bar, where he will have as full advantage. This is my present apprehension.

Then Sir Francis Pemberton being withdrawn, a question was put for adjourning the debate, and it passed in the negative; and the house

Resolved,

"That the orders and proceedings of the house being pleaded to the jurisdiction of the court of King's-bench ought not to be over-ruled."

And sir Francis Pemberton, and sir Thomas Jones were ordered to attend again, to give what further reasons they could for the maintenance of their judgment.

July 19, 1689.

Sir Francis Pemberton and Sir Thomas Jones attending, Sir Francis was first brought in.

Mr. Speaker. Sir Francis Pemberton, the house appointed you to attend formerly (but they have been prevented by other business) to give the reasons of your judgment int^r Jay & Topham.

Sir F. Pemberton. Mr. Speaker, this case was an action of trespass, and it was brought by Jay against Topham, for arresting and detaining him in prison by the space of ten days, and keeping him till he paid him 30*l*. to let him out of prison, by which means many of his affairs were lost, and left in that time undone, which is a common action at common law.

To this the defendant he comes and pleads, that there was an order of this house, made in March, 32 Car. 2. (the action is in the 34 in May) for taking of this Jay into custody, and to bring him to the bar of the house; and says, that by virtue of that order he took him and detained him, with an intention to bring him to the bar of this house. And this he pleads to the jurisdiction of the court, that the court had nothing to do with it, nor ought further to examine this matter. And upon that there was a demurrer, and upon the demurrer it was by the court adjudged, that he should answer over: that is, that he should plead in bar of the action; and this is all that I can discern by the case.

Now, Sir, as to the reasons, since this house is pleased to command me, I will shortly tell you what my apprehensions were, and upon what account we went in this case. When this ac-

tion was pleaded to the jurisdiction of this court, I considered, and could find no judgment at all against the jurisdiction of this court in any such case, nor any vote of this house, or any thing or order against it at all. The case that came nearest it, was the case of sir John Elliot, where there was an information for some misbehaviour in this house, against sir John Elliot, and others: They did there plead to the jurisdiction of the court, and there the court over-ruled it. It is true, afterwards, upon the return of king Charles 2, there was a writ of error brought upon that judgment, and errors assigned in the lords house, and the judgment was reversed; but there was no error assigned in over-ruling the plea to the jurisdiction of the court, but only this, that it was in the body of the information said, that they did speak some words in parliament, which the court of King's-bench could not try, because by the judgment of the lords house they were not cognizable at law; for the members of this house have always had a freedom of speech here: and upon that account it was reversed. But I must tell you, that in my lord Vaughan's report he did allow, that as to the miscarriage that was alledged in laying hands upon the speaker, the court of King's-bench had a jurisdiction.

And finding no footsteps of law, nor any thing of this honourable house that could direct us, I did consider then what was reasonable and fitting to be done; I knew we had a jurisdiction in the case of such an action as this is, and I found the objection against it was only one, That this house was a superior court, of a higher nature than the King's-Bench, and of a greater authority; and that the King's-Bench had nothing to do to inspect the actions of this house, or to examine what was done by virtue of any order of this house. And then, on the other side, I considered, if the courts of law could not examine it, that there would be a cause struck off by a bare allegation, without any more to do: for if we had no cognizance of it, if we could not examine the matters that were done in pursuance of the order of this house, how could we impanel a jury, and to what purpose should we try it? For if it were found against him that he had exceeded his authority, if we could not give damages for it, what should we examine for? I thought that the consequence of this would be, that that which was alledged to be a disorderly execution of the vote, must be struck off by a bare allegation.

Sir, This coming before us in a judicial way, and we being to do something in it, either throw out the cause, or over-rule the plea to the jurisdiction; I thought it most reasonable that this thing should be examined in that court.

Then I considered, that where justifications are made by virtue of acts of parliament, and every body most acknowledge that court is of a higher nature than the King's-bench, yet that was not enough to exclude the king's courts from their jurisdiction.

I considered in cases where justification is made by act of parliament, there is a justification by as high an authority as this is, that will be allowed on all hands; for there are not only the orders of this house, but the authority of the house of lords. You have in those cases fenced the matter as well as can be imagined, and taken as much care to protect them; given some power to plead summarily, others to plead not guilty, and justify by giving the special matter in evidence; but I never heard that there was any provision made for the pleading to the jurisdiction, though it was done by a higher authority: therefore I thought that the high authority and high nature of this court, could not exempt the King's-bench, being a court of law, to examine, whether what was alleged to be done, was done in pursuance of your authority, or not?

Then I did consider with myself, that if this plea should be over-ruled, the defendant was at no prejudice, for the same matter might be pleaded by way of bar. And it would have been admitted a good bar if true, and he could have no manner of prejudice that I know of by pleading as the court directs. We did not question the legality of your orders, nor the power of them; but the great business was, whether he had pursued this order of the house of commons, and that was the thing properly examinable? But on the other side it would be a monstrous mischief to the plaintiffs if such a plea was allowed to the jurisdiction; for it would be agreed on all hands, if Mr. Topham had abused his authority, and done any outrageous thing; if, when he had an order to bring a member to the bar of this house, he had kept him extravagantly, and not brought him thither, but exacted money of him; if the case in fact was so, it is certain he ought to have been punished, and to return damages to the person injured.

Then in this case, you know, Mr. Speaker, That this house sometimes hath a recess, and parliaments have intervals. When this court hath a recess, and the parliament is dissolved, (as there are many years sometimes when there is no parliament) then in the recess of parliament, (supposing there was a good order, and a man had a damage by the abuse of this order in the mis-execution of it) it is reasonable this man should be satisfied. But peradventure a parliament may not come in three or four years, perhaps six or seven years, in that case he would lose his action.

But that is not all, for in this case, if we could not examine it, the man would be without any remedy in the world. So that if one of your officers should abuse your orders, the person that he hath abused could have no help, if the courts of law could not help him. This was my apprehension: this court we know may examine their officers so as to punish them for it; but I never heard nor understood that this court could go in such a method as to give damages; for first in this case, the method of the law would be precluded: we know what are

the methods of a man's obtaining damages; first, he must prove his fact by witnesses; I never heard this honourable court did condescend so far as to give any oath; next they must be assessed by a jury: there is no other way as I know at all; I never knew this court take upon them to assess damages at all.

In the next place, if they could arrive at the matter of damages, I never knew any judgment given, or execution awarded for damages by this honourable court. So that my apprehensions were, that unless the courts at law had jurisdiction of all such actions as these were, this man must be remediless if he had wrong: on the other side, he would have recovered no damages, if he had none. No man would have said, that the house should not have made such an order, or he should not have executed it such a way as you intended it.

Mr. Speaker; These were my apprehensions in this case; I considered it as well as I could, and did see a great mischief on one side, if the ordinary courts of law had no jurisdiction, and could apprehend none if they had, in seeing whether the orders of this house were fairly executed or no, when I am confident that none of this house would allow there should be any cause of their order.

These being my apprehensions as a judge of the court, I did think that I was bound to over-rule the plea that was to the jurisdiction of the court. If I was mistaken in this case, it was an error of my judgment, I had no mind or design to meddle with the affairs of the house, nor to pry into what was done here; my design was to do justice. What weight these things have with others, I must leave with this honourable house: but this was that that induced me to give my opinion for the over-ruling of the plea.*

Mr. Speaker. Did you deliver these reasons in open court, when you gave judgment?

Sir F. Pemberton. No, we very rarely give any reasons in such cases.

Mr. Speaker. Because if you had given these reasons, it would have been some light to the serjeant to have pleaded afterwards.

Sir F. Pemberton. I do not know truly what he did afterwards; but this I am sure he was told, that he might have pleaded this matter in bar, and this would have been a good bar, and this I thought direction enough.

Mr. Speaker. Is it not usual in cases of great moment, as this was, to argue the point in giving judgment?

Sir F. Pemberton. It is so if they will argue it; but if the counsel on both sides let it go, we examine no further. [Sir Francis Pemberton withdrew.]

Sir Thomas Jones brought in.

* The contrast of the conduct of Pemberton upon this occasion, with that of Chief Justice Holt, upon the claim of Knollys to be earl of Banbury, (see the Case, 1693, *post*) is remarkably striking.

Mr. *Speaker*. The occasion I suppose you know of your being sent for; 'tis to know upon what reasons you over-ruled the plea to the jurisdiction between Jay and Topham.

Sir *Thomas Jones*. Mr. *Speaker*, in the first place, I seriously profess before God and this honourable house, that I never designed to interfere with the authority and privileges of this house. I have had the honour to be an unworthy member of it in two several parliaments; and truly I did always conceive, that for any thing transacted in this house, no other court had any jurisdiction to hear and determine it: and therefore I was always of opinion, that the judgment given in the case of sir John Elliot and my lord Hollis, was a very erroneous and unjustifiable judgment; and the rather, because I knew that there was an act of parliament, that for any thing done in this house, by speaking, debating, or any reasoning whatsoever, there ought to be no suit in accusation or condemnation concerning it, 'tis utterly void.

But, Sir, when I did give this judgment, I do confess I did think there was a difference to be taken in matters that were merely transacted by this house, and may be complicated of the authority and commands of this house, and of the execution of the authority and commands of this house abroad; and that was the case that was before us in the King's Bench.

Mr. Topham was complained of, that he had not only imprisoned the plaintiff Jay, but kept him in prison till he had paid him 30*l*. Now I did humbly conceive that this declaration ought to be answered, and not to be put off with a plea to the jurisdiction of the court.

'Tis true, as I did say, where the intire matter is transacted in this house, there a plea to the jurisdiction of the court is proper; but in the present case I did conceive, that jurisdiction was most proper that could try and determine the whole merits of the cause between both the parties, especially where the privileges of this house would no way suffer nor be injured. Thereupon I think Mr. Topham was advised and told, that he ought to plead this matter in bar, wherein there would be full consideration, and perfect regard given to the commands and authority of this house, and all imaginable reverence: if he had but produced a copy at most of your journal, that had been sufficient, and no judge would have been so silly, or imprudent at least, to have said, that had not been a good and sufficient authority. But Mr. Topham thinks it not fit at all to answer in this plea to the taking the 30*l*. for which, if it was extortion upon the subject, I am sure that whosoever has a care of the rights of the subject, as you have, would not have suffered the subject to have gone without remedy and satisfaction.

Sir, as to what may be said in this case, that upon complaint to you, you would have punished Mr. Topham; give me leave to say, that I think at that time, when Mr. Topham had this prisoner in custody, you were risen.

But besides, to let that go, I do conceive, and I never found it in my experience, when I was an unworthy member of this house, that you have ever given damage to a party that was injured by your officer. 'Tis true, you would punish your officer for the injury, but I never knew the party injured have any satisfaction.

Sir, another reason is this, the authority of this court argues very great; but with all reverence be it spoken to the authority of this House, the authority of an act of parliament is greater than the authority of this court: For although for the most part in acts of parliament you have the first production and formation of the acts of parliament, yet without the consent of the Lords, without the royal assent of the king, it is no law. But when it is a law by all these authorities, not only by yours, but by the consent of the Lords; in case one man does any thing by virtue of a command of such an act of parliament, suppose it be under the commissioners of sewers, or in the executing of a rate for the poor, or raising your poll-act; if any other man shall be so hardy as to question his doing his duty according to your commands, the party so questioned is either to plead in bar especially, or, which indeed you have provided for the ease of pleading in many cases, he may plead it generally, and give in evidence the special matter: But it never was known that any man should offer to say, I was an officer by act of parliament, and therefore demand, whether you will take cognizance of the matter, having done what I did by act of parliament.

And if it be so in cases of acts of parliament, as nobody will deny, then I thought it might be so when there was only a command of the House to do such a thing (the reverence to which would have been perceived if there had been a plea in bar), and there was an abuse of your order, in the exacting 30*l*. complained of: And I thought the rather so, because of the act of parliament I mentioned, 4 H. 8, c. 8, which does provide, that there shall be no prosecution or suit for any trouble or grievance that is done in this House, and makes it void. But it goes further, (it orders no plea indeed one way or other, either in bar, or to the jurisdiction, but) in the close of the act it says, That if any the persons thereafter should be vexed, troubled, or otherways charged for any cause as aforesaid, then he, or they, so troubled for the same, should have an action of the case against every such person or persons so vexing and troubling them, and recover treble damages and costs. And upon these reasons, Sir, I did give my opinion at that time, that the plea to the jurisdiction of the court should be over-ruled; which, if not agreeable to your judgment, I must humbly beg your pardon for it.

Mr. *Speaker*. Did you deliver these reasons in court, when you gave judgment for over-ruling the plea?

Sir *Thomas Jones*. Truly, Sir, I cannot say we did, nor cannot say we were demanded our

reasons, nor cannot say any thing was moved in arrest of judgment, or shewed to us why we should give our reasons; but I believe Mr. Topham will not say but he was advised, that it was proper for him to plead it in bar, and then all right would have been done to the authority of this court, and to Mr. Topham, as well as to the plaintiff.

Mr. *Speaker*. It would have been a satisfaction to Mr. Topham and the whole kingdom, if you had given your reasons; and we take it, that upon demurrers of great consequence, the court uses to give the reasons of their judgments.

Sir *Thomas Jones*. Truly it is so long ago, I am not able to say whether we did or did not; but it is not usual for judgment to be given *seriatim*, if all the judges of the court be agreed in the thing, as they were in this case.

Mr. *Speaker*. Where the judges agree, the Lord Chief Justice gives the opinion of the court; but then in matters of this moment, he usually gives the reason.

Sir *Thomas Jones*. As far as I told you before, we did give the reason, that it was more proper to be a plea in bar, than to the jurisdiction of the court.

Then sir Thomas Jones withdrew, and the House, after a debate,

Resolved, "That sir Francis Pemberton, giving judgment to over-rule the plea to the jurisdiction of the court of King's-bench, in the case between Jay and Topham, had broken the privileges of the House." And also,

Resolved, "That sir Thomas Jones giving judgment to over-rule the plea to the jurisdiction of the court of King's-bench, in the case between Jay and Topham, had broken the privileges of the House."

And by Order of the House, both sir Francis Pemberton and sir Thomas Jones were taken into custody for the said Breach of Privilege, and lay till there came a prorogation.

367. The Trial of HENRY HARRISON at the Old Bailey, for the Murder of Andrew Clenche, Doctor of Physic: 4 WILLIAM & MARY, A. D. 1692.

Wednesday, April 6, 1692.

Judges present { Lord Chief Justice Holt,
Lord Chief Baron Atkins,
Mr. Justice Nevil.

THE Keeper of the prison of Newgate did, according to order of the Court, being then sat, bring up the body of Henry Harrison, gent. to the Sessions-house in the Old Bailey, London, who being at the bar, was arraigned upon an indictment of felony and murder, found that day by the grand jury for the city of London, in manner following:

Cl. of Arr. Henry Harrison, hold up thy hand. [Which he did.] You stand indicted by the name of Henry Harrison, late of London, gent. for that you, not having the fear of God before your eyes, but being moved and seduced by the instigation of the devil, the fourth day of January, in the third year of the reign of our sovereign lord and lady, king William and queen Mary, of England, &c. about eleven of the clock in the night of the same day, with force and arms, &c. at London, viz. in the parish of St. Peter, Cornhill, in the ward of Lime-street, in London aforesaid, being in a certain coach with one Andrew Clenche, doctor of physic, and a certain man yet unknown, in and upon the said Andrew Clenche, in the peace of God, and of our sovereign lord and lady, the king and queen, then and there being, violently, feloniously, and of your malice before-thought, did make an assault. And that you the said Henry Harrison, with the

help and assistance of the said man unknown, with a pocket handkerchief, with a coal in the same being put, of the value of two-pence, about the neck of him the said Andrew Clenche, then and there, feloniously, voluntarily, and of your malice before-thought, did put, fasten and bind; and that you the said Henry Harrison, with the said handkerchief with the coal aforesaid in it by you the said Henry Harrison, with the help and assistance of the aforesaid man unknown, about the neck of the said Andrew Clenche then as aforesaid, put, fastened and bound, him the said Andrew Clenche, then and there with force of arms, &c. feloniously, voluntarily, and of your malice before-thought, did choak and strangle; by reason of which choaking and strangling of the said Andrew Clenche by you the said Henry Harrison, with the handkerchief aforesaid, with the coal as aforesaid put in it, he the said Andrew Clenche instantly died: so that you the said Henry Harrison, with the help and assistance of the said man unknown, him the said Andrew Clenche, the said fourth day of January in the year aforesaid, at the parish and ward aforesaid, in manner and form aforesaid, feloniously, voluntarily, and of your malice before-thought, did kill and murder, against the peace of our sovereign lord and lady, the king and queen now, their crown and dignity.

How say you, Henry Harrison, are you guilty of this felony and murder whereof you stand indicted, or not guilty?

Mr. *Harrison*. Not guilty in thought, word nor deed.

Cl. of Arr. Culprest, how will you be tried?

Harrison. By God and my country.

Cl. of Arr. God send you a good deliverance.

Then the said Mr. Harrison was taken away from the bar by the Keeper of Newgate. And afterwards the same day, about eleven o'clock in the morning, the said Henry Harrison was brought to the bar, and he desired the Court that he might then be tried, which was granted, and those persons who were returned upon the Jury were called over twice, and their appearances recorded.

Cl. of Arr. You Henry Harrison, these men that you shall hear called, and personally do appear, are to pass between our sovereign lord and lady, the king and queen, and you, upon trial of your life and death; if therefore you will challenge them, or any of them, your time is to challenge them as they come to the book to be sworn, and before they be sworn.

L. C. J. Holt. Mr. Harrison, you may challenge such of the Jury as you shall think fit before they be sworn.

Then the Jury was called and sworn, and then were counted; and the twelve sworn were these whose names follow: John Roll, Nathaniel Houlton, Michael Pindar, James Hulbert, Joseph Howe, Richard Chewne, John Lawford, Nicholas Wildeboare, Robert Williamson, William Merriden, Thomas Simpson, Thomas Pakeman.

Then proclamation for Information and Evidence was made as is usual.

Mr. Harrison. My lord, I have made no challenges, because I do believe the jury to be honest men.

Cl. of Ar. Henry Harrison, Hold up thy hand. [Which he did.]

Gentlemen, you that are sworn, look upon the prisoner, and hearken to his cause. He stands indicted by the name of Henry Harrison, late of London, gent. &c. [he reads the Indictment.] Upon this indictment he hath been arraigned, and thereunto hath pleaded not guilty; and for his trial hath put himself upon God and his country, which country you are. Your charge is to enquire whether he be guilty of this felony and murder whereof he stands indicted, or not guilty. If you find that he is guilty, you are to inquire what goods and chattels, lands or tenements he had at the time of the felony and murder committed, or at any time since. If you find him not guilty, you are to inquire whether he fled for it. If you find that he fled for it, you are to inquire of his goods and chattels, as if you found him guilty. If you find him not guilty, nor that he did fly for it, you are to say so, and no more; and hear your evidence.

Mr. Darnell. My lord, Mr. Harrison's agents or friends have, since the last sessions, made or conveyed away a young man that was a principal evidence against him.

L. C. J. That is a very ill thing, and if it

be proved, it will no way conduce to Mr. Harrison's advantage.

Harrison. My lord, I know nothing of it. But, my lord, one of my witnesses, that would have been material for me, is lately dead, sir Edward Hungerford's son.

Mr. Darnell. May it please your lordships, and you gentlemen that are sworn: I am of counsel for the king and queen against the prisoner at the bar, who stands indicted for the murder of Dr. Andrew Clenche, which was as barbarous a murder as any that hath been committed in this age. And considering it was done in the dark, I think there will be given as clear an evidence of it against Mr. Harrison, the prisoner, as can be expected. And it was upon this occasion; One Mrs. Vanwicke a widow (between whom and Mr. Harrison there was a great kindness) prevailed with Dr. Clenche, to whom she was indebted 20*l.* to lend her so much more as would make it up 120 pounds, and to take a mortgage of a house of hers in Buckingham court near Charing Cross for his security; and Mr. Harrison was present with Mrs. Vanwicke at the lending of the rest of the money, and executing of the mortgage, as he was wont to be at the management of her affairs; but when the time came that it was to be repaid, the doctor could not get his money, and Mrs. Vanwicke having but an estate for life in the house, and having long delayed the doctor, he brought an ejectment for the recovering of the house, upon which the prisoner came to Dr. Clenche, and abused him with very scurrilous language, and his passion growing higher, he laid his hand upon his sword, and would have drawn it, and if it had not been for one Mr. Johnson, it was thought he would have killed the doctor at that time; so that the doctor desired Mr. Johnson to take the business upon himself, and to act in his own name, he was so much afraid of him. And it will be proved further to you, that at another time the prisoner said, that Dr. Clenche was a rogue and a villain, and deserved to have his throat cut. And some time after this, Mrs. Vanwicke would have borrowed some more money of the doctor, but he refused to lend it her; whereupon she acquainting the prisoner with it, he said, leave him to me, madam; I'll warrant you, I'll manage him; he is a rogue, and deserves to have his throat cut. And afterwards, about St. Thomas's day last, the prisoner went to Mrs. West the tenant, who dwelt in the house mortgaged to Dr. Clenche, and desired of Mrs. West to have some money for Mrs. Vanwicke, and it should be discounted in part of the then next Christmas rent. But the said Mrs. West refused to pay him any, telling him, that she and her husband were forbid by Dr. Clenche and the ground landlord, to pay any more to Mrs. Vanwicke; and thereupon the prisoner expressed his further malice against the doctor, and said, he is a great rogue, and a villain, and deserves to have his throat cut, and will not die in his bed. And, gentlemen, soon after

the prisoner began to put his malicious design against the doctor in execution, and the method he took was first to change his lodgings; for on the day before Christmas Eve last, he took new lodgings at one Mr. Garway's in Threadneedle-Street, near the Old Exchange, attended by a foot boy, pretending himself to be a parliament man, and that he was just then come out of the country, and lay in his lodgings there every night, until the first day of January following, but lay out that night, and the two next nights following. And whilst he lodged at this Mr. Garway's this matter happened, which does conduce somewhat towards the discovery of this murder. One evening the prisoner being in his chamber there, and one Mrs. Jackson, the daughter of Mrs. Garway, making a fire for him, he did take out his handkerchief, and held it before the fire to dry it, which she took great notice of, because it was coarse and dirty, and not fit for his quality (as she thought), it being made of ordinary Indian stuff, like her mother's maid's apron. And, gentlemen, this very handkerchief was the same with which the murder was committed, and this Mrs. Jackson will swear it to be the same; for it is a very remarkable one, and it will be produced to you. And we shall shew you further, That on the 3d day of January (being the day before this murder was committed) he caused a sham letter to be left for him at his lodgings at this Mr. Garway's, as written from a friend of his that was sick in the country, earnestly pressing him to come quickly down to him: And we shall prove, that the same evening, he being with Mrs. Vanwicke in Woodstreet compter, did again threaten Dr. Clenche, and said, that he was a rogue, and he would have his blood. And upon the fourth day of January last, he again changed his lodgings and took new ones at one Mr. Jones's, a cane-chair maker in St. Paul's church-yard, and there he pretended himself to be a country gentleman, just then come out of Cumberland, and brought in a portmanteau trunk thither: And the same day he sent a letter to Mrs. Garway, where he had lodged before, acquainting her, that he was gone out of town for a week or ten days. And, to give you farther satisfaction, we shall prove, that upon the same fourth day of January, in the night of which this unfortunate gentleman was murdered, the prisoner was at one Mr. Robert Humston's lodgings at the Golden Key in Fleet-street, over-against Fetter-Lane end, at near nine of the clock at night; and being asked by Mr. Humston to stay and sup with him, he said, he could not, for he had been about earnest business that day, which was to be done that night, and that a gentleman stayed for him in the street, to go with him about it, and so he went away. And soon after, about nine of the clock the same night, two men standing in Fleet-street, at Fetter-Lane end, called for a coach, and asked the coachman if he knew Dr. Clenche, who dwelt in Brownlow-street in

Holborn; and the coachman replied, he did know the street, but not the doctor: whereupon they went into the coach, and ordered him to drive to the end of Brownlow-street; and when they came thither, one of them called to the coachman, and bade him go to Dr. Clenche's and tell him, that two gentlemen in a coach, at the end of the street, desired him to go with them to a patient that was very sick; which the coachman did. And he found the doctor in his night-gown and slippers, and just a-going to bed; but he immediately dressed himself, and went to them into the coach. And it fell out very happily for the further discovery of this murder, that while this coach stood at the end of Brownlow-street, a young gentlewoman standing at her door near it, and fancying that while the coachman went on the errand, the gentlemen would slip out of the coach (I think they call it bilking) she watched them. And a lamp that lighted cross Holborn, over-against Brownlow-street end, and another about the middle of Brownlow-street, gave such a light into the coach, that she plainly saw one of the men that sat in it, and see him look out of the coach after the coachman, and heard him swear at the coachman, because he made no more haste in going to the doctor's house; and she is very certain that the prisoner at the bar is the same person that looked out of the coach, and that did swear at the coachman, and is more confident of it from the remarkableness of his voice. For she hearing of this murder, and remembering these circumstances, she went to Newgate to see the prisoner, and hearing his voice in another room, before she saw him, she declared to the persons that were then with her, that the voice she then heard, was the person's voice that she saw look out of the coach, and that did swear at the coachman; and afterwards, when she came into the room where the prisoner was, though with several other men, she pointed to him as the person, and she hearing him then speak again, declared to the persons with her, that both by his voice, and by his countenance, she knew him to be the same man. And, my lord, after those gentlemen had gotten the doctor into the coach, one of them called to the coachman, and bade him make haste and drive them to Leaden-Hall-Market, and when they were come within Holborn-Bars, one of them called to the coachman, and bade him drive faster; whereupon the coachman drove them very fast through Holborn to Leaden-Hall-Market-Gate; and when he came there, one of them bade him drive to the Pye without Aldgate (before which time, without doubt, the murder was committed upon the doctor, for his hat was found next morning in Holborn, near Fetter-Lane end; but the driving so long about after, is supposed to be done, lest the doctor might recover;) and when they were come without Aldgate, one of them ordered the coachman to ask there for one Hunt, a chyrurgeon, which he did, and being answered, that

no such person was there, he ordered the coachman to drive back again to Leaden-Hall, and when they came there, one of them called the coachman, and gave him three shillings and six-pence, and bad him go into the market there to one Hunt, a poulterer, and buy them a couple of fowls, but the coachman could not find any Hunt, a poulterer; but however he bought a couple of fowls for three shillings, and when he came with them to his coach, the two gentlemen were gone, and the doctor left in the coach, murdered, with a handkerchief tied fast about his neck, with a coal in it (which will be proved to be the prisoner's handkerchief.) Besides, there was a boy in the street there, who took notice of the coachman's being sent of an errand, and saw the two persons come out of the coach in great haste, and he going towards the coach before they went out of it, one of them did swear at him to be gone, and of him the boy took most notice, and was as positive as any man can be to the person of one that he never saw before, that the prisoner now at the bar was one of them, and was the person that did then swear at him; but this witness is spirited away, and cannot be heard of, although he hath been described in the Gazette, and diligent search and enquiry has been made after him. But we have his examination upon oath before the coroner; and we must submit to the court how far that shall be admitted as evidence. Gentlemen, we will call our witnesses; and if they prove all this matter, I believe every man here will be satisfied; that the prisoner at the bar is guilty of this base murder. Pray call and swear Mr. George Wigmore. (Who was sworn with others.)

Mr. Darnel. Pray, Mr. Wigmore, tell my lord and the jury what you know of any money that was lent by Dr. Clenche, and to whom.

Wigmore. May it please your lordship, there was a draught of a mortgage from Mrs. Vanwicke to Dr. Clenche, made by a gentleman of Grays-Inn, for the sum of 120*l.* and I ingrossed it; and I paid, by the doctor's order, above threescore pounds of the money, and the rest of it was satisfied before; and upon sealing of the mortgage for the money, Mr. Harrison and one Mr. Rowe fell out about their dividend of the money, and called one another ill names; and Mr. Rowe produced a bill of what he had done and laid out for coach-hire and other things for Mrs. Vanwicke; and Mr. Harrison and he had high words about it, and called one another rogues; so I told them, if they could not agree, I would put the money up again, and carry it home; but Mrs. Vanwicke and they did agree at last, and sealed the mortgage, and I paid the money; and Mrs. Vanwicke and Mr. Harrison took out 20*l.* of the money, and paid it to Mr. Rowe; and after Mr. Rowe was gone, they desired me to go with them to the Young Devil tavern, and they both used hard expressions there against Mr. Rowe.

L. C. J. Who was the mortgage made to?

Wigmore. My lord, it was made to Dr. Clenche for 120*l.*

Harrison. Pray, Sir, will you tell the jury how much money the gentlewoman had; and if Mr. Rowe had not stept between me and her, I had not been in question.

Wigmore. Mrs. Vanwicke acknowledged, that the money I paid her made up 120*l.*

L. C. J. What did you hear the prisoner say against Dr. Clenche?

Wigmore. My lord, I do say that he was very troublesome to the doctor.

L. C. J. Were there any reproaches cast upon the doctor at that time?

Wigmore. No, my lord, only upon Rowe, because he was a trustee.

Mr. Darnel. Did you hear him say any thing against the doctor?

Wigmore. Indeed, I cannot particularly say.

L. C. J. He is upon his oath, and he is sensible, and understands the question.

Wigmore. He did say very ugly words; and when I met him afterwards in the highway, he was very huffy, and I thought he would have drawn his sword upon me.

L. C. J. What did he say of the doctor?

Wigmore. I cannot say particularly what he said.

L. C. J. Stand down.

Mr. Darnel. Call Mr. Thomas Johnson. (Who was sworn, and stood up.)

Mr. Darnel. Sir, Pray give the court an account what you know concerning this matter.

Johnson. My lord, I believe I shall say nothing that Mr. Harrison will contradict. I was attorney for Dr. Clenche between him and Mrs. Vanwicke; and I sued Mr. Rowe, that was bound with Mrs. Vanwicke in a bond to perform covenants for re-payment of the money lent her by Dr. Clenche upon mortgage; and I advised the Dr. and told him, do not let us trouble the tenant, but let us take Rowe first; and I sued Rowe, and had him arrested; and after some time, I saw that the mortgage must do our business, for Rowe could not pay the money; whereupon I caused a declaration in ejectment to be delivered against Mrs. Vanwicke's tenant of the house mortgaged by her to Dr. Clenche; and then Mr. Harrison came to me, and he expressed himself against the doctor after a strange rate, and laid his hand upon his sword; so, my lord, I said to him, What a fool do you make of yourself! Must none go to law, but they must ask your leave? I suppose Mr. Harrison cannot deny this. Then Mr. Harrison preferred a petition to the lords commissioners of the Great Seal for Mrs. Vanwicke, and thereby suggested to their lordships, that she was wronged in the purchase, and in the mortgage-money, and that 20*l.* of it was a former debt of her husband's; and he finding she could have no relief before them without payment of the mortgage-money, he grew troublesome; yet says I, Mr. Harrison, What she hath done, I cannot help; but if

she would pay the rest, I told him I would abate her 20*l.* and the interest money also.

Mr. Darnel. Pray, Sir, did the doctor desire you to act for him in your own name, because he had no mind to meet with Mrs. Vanwicke and the prisoner?

Johnson. The doctor did find himself too deeply concerned with them, and he did not care to have to do with them; whether it was that he was afraid of his life, I cannot say; but he said to me, Pray, Sir, go on, I will put all into your hands. and I will trust you with all the affair; and let them come to you, and not trouble me; own it to be your own; and I told him I feared none of them; and the doctor gave out, that he had made over all to me, although he had not; and upon this, I fear, comes this unfortunate business, and the doctor's lady must look after it herself.

L. C. J. What did he say when he had laid his hand upon his sword in your study?

Johnson. He said the doctor had cheated the widow; and he said, That he would be revenged on him, as near as my memory will serve me; I suppose he will not deny it; whether he did this in a passion, or to affright the doctor or no, I cannot tell.

L. C. J. Was that before you offered to abate the 20*l.*?

Johnson. It was before I offered to abate it.

Harrison. How long was it before Dr. Clenche was murdered?

Johnson. I think it was about a fortnight, or three weeks, or a little more.

Harrison. I never threatened the doctor in my life; but I said, Rowe had been a villain, and a cheat, and he and Rowe were the men; and I shall make it appear, that the doctor never wronged the widow.

L. C. J. How came Rowe to be intrusted or concerned with the money?

Johnson. My lord, Mr. Cornelius Vandinker, a merchant, gave a legacy of 500*l.* to the widow Vanwicke and her children; and Mr. Rowe was a trustee on the purchase, and had by that the management of the affair.

Darnel. Call Mr. George Howard. (Who being sworn, stood up.)

Mr. Darnel. Mr. Howard, Give the court an account of what you know concerning the prisoner's threatening Dr. Clenche.

Howard. My lord, I was at Joe's Coffee-house, near Warwick-House in Holborn, some considerable time before Dr. Clenche was murdered, where Mr. Harrison used several virulent expressions against Dr. Clenche; among others, one was, that he was a rogue and a rascal, and deserved to have his throat cut. Mrs. Vanwicke was then in company, and they both said, that they then came from Dr. Clenche's.

Mr. Darnel. You are sure he said that Dr. Clenche deserved to have his throat cut?

Howard. Yes: he said, that Dr. Clench deserved to have his throat cut.

Harrison. Who was I talking to?

Howard. You were talking to Mrs. M. Sheriff.

Mr. Darnel. Call Mrs. Mary Sheriff. (Who was sworn, and stood up.)

Mrs. Sheriff. My lord, Mrs. Vanwicke came to my house with Mr. Harrison, and desired me to go with her to Dr. Clenche's house; and when we came there, she desired him to let her have 20*l.* more, and he said, No; if his house were full of money, he would not lend her any more, so long as she kept Mr. Harrison's company, for he would spend it; and he advised her to be a gentleman's house-keeper, and he would help her to a place; and told her withal, that she owed him 120*l.* for which he would take 100*l.*; and we left Mr. Harrison behind us at my house, and did not take him with us, because we were afraid he might anger the doctor, and fall out with him; so when we came back, Mr. Harrison asked Mrs. Vanwicke, what Dr. Clenche said: why, says she, he saith, that he will not lend me any more money while I keep you company, for you will spend it, and that I must go to service. To service! said Mr. Harrison; God damn him! Have a person of your quality go to service! He deserves to have his throat cut; let me alone, I'll manage him as never any man was managed; and so away they went together.

Harrison. Did not you say, that as you hoped to be saved, that I was innocent of the thing?

L. C. J. She does not accuse you of doing the fact, but gives an account of some expressions that passed from you.

Mrs. Sheriff. You were always talking against Dr. Clenche; and you said, God damn him, he was an old rogue, and that Mrs. Vanwicke was almost starved to death.

Harrison. Rowe, Rowe, I meant, my lord.

The Prisoner then being in a passion.

L. C. J. Mr. Harrison, do not fall into a passion; it may be more to your advantage in the making your defence, if you keep your temper.

L. C. J. Witness, what were the words that he said against doctor Clench?

Mrs. Sheriff. Why, he speaking of doctor Clenche, said to Mrs. Vanwicke, God damn him would he have a person of your quality go to service! He deserves to have his throat cut. Well, madam, says he, be contented; I'll manage him as never any man was managed.

Harrison. What had you for your swearing?

Coroner for the King and Queen. Witness, he asketh you, if you had any thing for your swearing against him?

Mrs. Sheriff. No, I had nothing, neither have I need of any thing; I had not so much as my coach hire.

Mr. Darnel. Call Mrs. Elizabeth West. [Who was sworn.]

Mr. Darnel. Mistress, give an account to the court, what you know about the prisoner's coming to demand rent of you, and what passed.

Mrs. West. May it please your lordship, this gentleman, the prisoner, came to me two or three days before St. Thomas's day last, and desired me to give him some rent for Mrs.

Vanwicke; and I told him I had no power to pay him, because I was warned by Dr. Clenche to pay no more: says he to me again, Dr. Clenche and Rowe are great rogues, and great villains. Sir, says I to him again, I believe that the doctor is a very honest man. No, says Mr. Harrison, he is a great villain, and he will never die in his bed; which of them he meant, Mr. Rowe or Dr. Clenche, I cannot tell. And Mrs. Vanwicke and Mr. Harrison, a little time before that, pressed me to let them have some shop goods in part of her rent, to grow due; and she made great complaint, that her children were ready to starve; and I then told them, that Mr. Johnson had fore-warned me to pay no more rent to Mrs. Vanwicke, and if I did, I should pay it again; and therefore I would not pay any more rent to her, or deliver her any goods, until she had agreed with Mr. Johnson; and then Mr. Harrison said, that Mr. Johnson was a great villain and a great rogue, and that they had all combined together to cheat the widow. And Mr. Johnson being at my house, Mrs. Vanwicke fell upon him in a great rage, and said, she would tear his throat out, and laid hold on him; and Mr. Johnson got from her, and went away in great haste. And the last time I saw Dr. Clenche, I pressed very hard upon him, to let Mrs. Vanwicke have more money: and the doctor said, that she would never do any good with it, for she spent it all upon Mr. Harrison; and I wished him to let her have 20*l.* more; and he said, that he advised her to go to service, and that he had wished her to a service of 20*l.* a year, and she abused him for it.

L. C. J. What cloaths had the prisoner on?

Mrs. West. My lord, he had an old threadbare black cloth suit of clothes on, which looked very shabby.

Harrison. What religion are you of, mistress?

Mrs. West. I was born and bred a Protestant.

Harrison. I believe you are a Papist, and will swear any thing; you keep Roman Catholics in your house, they have murdered Dr. Clenche, for aught I know.

L. C. J. Did Mr. Harrison ever lodge in your house?

Mrs. West. No, my lord, I have none but persons of quality lodge in my house, and they belong to the present government.

Mr. Darnel. Call Ann Watson. [Who was sworn.]

Mr. Darnel. Pray, tell my lord and the jury, what you know of Mr. Harrison's taking of lodgings at Mr. Garway's house, and when it was.

Anne Watson. He came about six o'clock at night, the day before Christmas-eve last, to my master's, Mr. Garway's house, and told us, that he was newly come out of the country; and lodged there that night, and so he did until and upon the last night of December; and on the first day of January he went out, and staid out that night; and on the Sunday, the 3rd of January last, at night, he came again with a

person with him, and fetched away his portmanteau-trunk and things, and paid for his lodging; and in his absence there was a letter left for him, which I gave him, and he said, it came out of the country, and that he had a friend sick in the country, and did intend to go down to see him, being one from whom he expected a legacy, and he left that letter on the kitchen window, and on the Monday after, being the 4th day of January last, he sent a letter, signifying he was gone out of town.

Then the Letter was produced, marked with the Penny-post mark.

Mr. Darnel. Who knows Mr. Harrison's hand? *Mr. Johnson,* take that letter and look upon it, and tell the court if you think it to be Mr. Harrison's hand.

Mr. Johnson takes the letter and looks upon it.

Johnson. My lord, I believe it to be Mr. Harrison's hand.

Mr. Darnel. My lord, I desire that the letter may be read.

L. C. J. *Mr. Clerk of the Peace,* read the letter; and the subscription first.

Cl. of the Peace reads:

To Mrs. Garraway, at the Hand and Apple in Threadneedle-street, near the Royal Exchange,
Present.

"Mrs. Garraway,

"I am sorry it should be such an inconvenience to you, as it is. I have left with your maid, three half-crowns, and if it is not enough, I will give you more. I am gone out of town for a week or ten days, and as soon as I come again, I will wait on you; which is all till I see you, from your friend and servant,

4th Jan. 1691. H. HARRISON."

Mr. Darnell. Call Mr. Henry Garway and his wife. [Who were called and sworn.]

Mr. Darnell. Mrs. Garway, take that letter, and look upon it, and tell the court when you received it. [Then she takes the Letter which was produced, and read as before, and looked upon it.]

Mrs. Garway. My lord, I received this Letter on Monday the 4th day of January last.

L. C. J. Watson, when did he leave the lodgings, say you?

Anne Watson. He went away the 1st of January last, about nine o'clock in the morning, and returned not that night; but on the 2nd of January last, he was at my mistress's shop again (as my mistress told me), and he came about five a'clock on the next Sunday night (being the 3rd of January last) with a person with him, to my master's house, and fetched away his portmanteau-trunk and things, and left three half-crowns with me for his lodgings, which I gave to my mistress.

Mr. Darnell. Call Mrs. Catharine Jackson. [Who was sworn.]

Mr. Darnell. Pray, tell my lord and the jury, what you know concerning Mr. Harrison's coming to lodge at Mr. Garway's, and

when he went away, and what you know of any handkerchief he had.

Mrs. Jackson. He came on the day before Christmas-Eve, to lodge at my father's, Mr. Garway's house, and lodged there several nights, and went away the 3rd of January at night, with his things, but was absent some nights between his coming and going away; and whilst he lodged there, I observed a handkerchief in his hand, as I was making a fire for him in his chamber, and the more, because he had said he was a parliament-man, and I thought it more like a seaman's handkerchief, than a parliament man's, and our maid had an apron of the same kind of stuff. [Then the handkerchief was produced in court by the coroner, and the coal in it, wherewith Dr. Clenche was strangled.]

Mr. Darnell. Mrs. Jackson, I desire that you would look upon that handkerchief, and tell the court what you know of it.

Mrs. Jackson. This is the handkerchief, that I saw Mr. Harrison hold to the fire, when I was making of it in his chamber, or very like that handkerchief, for I observed it to be very like my mother's maid's apron. [Then a piece of the maid's apron was produced, and they being compared, were very like.]

Harrison. Did you hear me say, I was a parliament-man?

Mrs. Jackson. Yes, I heard you say so.

Harrison. Perhaps you might hear my boy say so.

Mrs. Jackson. Your foot-boy said, you were a parliament man: and you said so yourself.

Mr. Darnell. Call Mr. Garway again. [He appeared.]

Mr. Darnell. Where is the letter you received from Mr. Harrison, since he was a prisoner?

L. C. J. What do you say about a letter that came to your house from the prisoner?

Mr. Garway. My lord, I had this letter from him last Saturday, directed to my wife, and I believe it to be his hand. [He produceth the Letter.]

Mr. Darnell. My lord, I desire that the Letter may be read.

L. C. J. Read the letter, Mr. Tanner. [Clerk of the Peace reads.]

"To Mrs. Garway at the Hand and Apple in Threadneedle-street, behind the Royal Exchange, Present.

"Mrs. Garway,

"I was informed yesterday, that you are to appear against me at next sessions. I am sure you never heard me mention Dr. Clenche, in all your life; and if you do, it will look like malice. My Lord Chief Justice is sensible of the wrong done me. This is all from your servant,
HENRY HARRISON."

L. C. J. Mr. Harrison, did I ever tell you, that I was sensible of it? [To which he made no reply.]

Mr. Darnell. Call Mr. John Cartwright. [Who was sworn.]

Mr. Darnell. I would have you declare, what you heard Mr. Harrison say concerning Doctor Clenche.

Cartwright. My lord, upon the 3rd of January last, Mr. Harrison came to Woodstreet Compter; it was on a Sunday in the evening, about five or six o'clock, I was standing in the gate, and I let him in. As soon as he came in, he asked how poor Mrs. Vanwicke did; says he, She hath been wronged of 500*l.* within these 12 months: Then I let him into the court, and he went into her chamber; and about half an hour after, I was sent by my master, to require some chamber-rent of Mrs. Vanwicke, and I heard Mr. Harrison and she at high words, and in a great passion, and I heard Mr. Harrison swear, God damn his blood, he would be revenged of that rogue, and named Clenche or Winche, I cannot tell which, and he would have his blood, ere it were long.

Harrison. Where were you?

Cartwright. My lord, I was at the chamber door, and there was no body on that side of the house, but Mr. Harrison, Mrs. Vanwicke, and myself.

Mr. Darnell. Call Mrs. Mary Jones. [Who was sworn.]

Mr. Darnell. Now, my lord, I will call one to prove, where he took a new lodging, the very day the murder was done.

L. C. J. Cartwright, was that in Mrs. Vanwicke's chamber that you heard him swear so?

Cartwright. Yes, my lord, in her chamber, and none was with her, but he only.

Mr. Darnell. You, the last witness, Mrs. Jones, when did Mr. Harrison come to lodge at your house?

Mrs. Jones. He came on a Monday.

Mr. Darnell. What day of the month was it?

Mrs. Jones. I can't tell what day of the month, for I did not set it down.

Mr. Darnell. Was it the Monday before he was taken?

Mrs. Jones. Yes, it was the Monday before.

Mr. Darnell. Whence did he pretend to come?

Mrs. Jones. He said, that he was come out of the country, and had formerly lodged in Fleet-street, and that where he had lodged formerly, they had left off house-keeping, and were gone into the country.

L. C. J. Where is your house?

Mrs. Jones. In St. Paul's Church-yard, at the sign of the Golden Ball.

Mr. Darnell. Call James Howseman. [Who was sworn.]

Mr. Darnell. Do you tell what you know about Mr. Harrison's being at Mr. Jones's house.

Howseman. My lord, he came in about eight o'clock at night, and brought a porter with him, and a portmanteau trunk; and after that, the porter went out a little before him, and then he followed him, and went out after.

Mr. Darnell. Did you hear him say, from whence he came?—*Howseman.* No, I did not.

Mr. Darnell. Call Anne Evans. [Who did not appear.]

Mr. Darnell. Then call Mr. Robert Humston. [Who was sworn.]

Mr. Darnell. Mr. Humston, I desire you will give the court an account of Mr. Harrison's being at your house that night Dr. Clenche was murdered.

Humston. My lord, I met Mr. Harrison on Monday the 4th of January last, and he told me, he was going to the Compter, to a gentleman that was much oppressed, and that he wanted money to get her released; upon which, I gave him some money, and after some discourse, I desired him to bring home my gown, that I formerly let him, and seemed angry with him, for that he had several times promised me to bring it home, but had failed therein; and thereupon he promised, that I should have it that night: and that evening about nine of the clock, he came to my lodgings, and brought home my gown; and when he came, I asked him if he had gotten Mrs. Vanwicke released: and Mr. Harrison answered, no. Upon which, I blamed him for neglecting an old friend; and Mr. Harrison excused it, telling me, that he had met with some persons upon earnest business, which prevented him. And then I asked Mr. Harrison to stay and sup with me, but he refused it, saying, that he had been about extraordinary business that day, which must be done that night, and that a gentleman stayed in the street for him, and they two were going to do it.

L. C. J. Where do you live? And how long stayed he at your house?

Humston. I lodged then at the Golden Key in Fleet-street, over against Fetter-lane end: he came to my lodgings about nine of the clock at night, and stayed there but a little time.

L. C. J. What manner of cloaths had he on?

Humston. My lord, he had a cloak on, but I cannot tell what cloaths he had under it, he brought my gown up under his cloak.

Mr. Darnell. Swear Esther King. [Who was sworn.]

Mr. Darnell. Do you know what time Mr. Harrison was at Mr. Humston's lodgings?

Esther King. It was on Monday the 4th day of January last, about nine of the clock at night, as near as I can guess, the shop was shut up, and I let him out.

Mr. Darnell. Where was it?

Esther King. At the Golden Key in Fleet-street, over against Fetter-lane end.

Mr. Darnell. What cloaths had he on?

Esther King. I cannot tell well, but he had a cloak on, I do not know what cloaths he had on besides.

Harrison. Was it eight or nine o'clock?

Esther King. It was near nine, as near as I can guess.

Mr. Darnell. Swear John Sikes the coachman. [Which was done.]

Mr. Darnell. Give an account to the court

what you know about carrying two men in your coach, and how you found Dr. Clenche murdered.

John Sikes. My lord, on the 4th of January last, being Monday, I was at the Play-house, and there I took up a man and a woman, and carried them into the city; so I brought the gentleman back again to the Green-Dragon tavern in Fleet-street; and then, he said he would pay me by the hour; he said that it was but much about nine o'clock. Then I left him, and was driving up the street, towards the Temple, and two men stood in Fleet-street, about Fetter-lane end, and they asked me, if I knew Dr. Clenche, who dwelt in Brownlow-street in Holborn? I told them, that I did not know Dr. Clenche, but I knew the street. So they went into my coach, and one of them bade me drive thither, and I did, and stopt at the street's end; because the gate at the other end was shut, so that I could not turn my coach: and one of them bid me go and tell the doctor that there were two gentlemen in a coach at the street's end, that would desire him to go with them to see one that was not well. The doctor asked me if I could not tell who they were? Or, who it was, that he was to go to? I told him that I could not tell. The doctor was in his night gown and slippers, and he dressed himself: and when he came to the coach, one of them removed from his place, and gave him the hinder part of the coach, and told him that they had a friend that was not well: and one of them bid me drive to Leadenhall-market; and when I came about Holborn-bars, one of them called to me, and asked me, why I drove so slowly? and bid me drive faster; so I drove fast, and came to Leaden-hall: and then one of them bade me drive to the Pye tavern without Aldgate, and there ordered me to stop. And when I had stopped there, one of them called to me, and told me that I need not stir out of my coach box; but call to the boy at the tavern, and ask for one Hunt a chyrurgeon, which I did do: and when the boy came to me again, he said there was no such man. Then one of them bade me drive back again to Leaden-hall; and in the time I stayed there, and turned my coach, Aldgate was shut; and when I came to the gate, one of them gave sixpence to the watch, and the gate was opened, and I drove to Leaden-hall gate. And when I came there, I stopped again, and one of them gave me half-a-crown, and bade me go and buy a fowl of one Hunt a poulterer; but after I had gone a little way from the coach, he called me again, and said, here, coachman, you had as good take another shilling, and buy a couple: so I went and bought a couple of fowls, but could find no such poulterer as Hunt; so I bought them of another, and I gave three shillings for them. And when I came back to the coach side, I found Dr. Clenche (as I thought) sitting against the fore seat, with his head against the cushion: I pulled him, and cried, Master, master, for I thought he had been in drink, but I could not

get one word from him ; and then I went to the watch, who were near ; and when they came, we found him strangled, with a handkerchief about his neck, and a coal in it, placed just upon his windpipe, but the other two men were gone.

L. C. J. Had one of the two men a cloak on?

J. Sikes. I cannot remember that.

L. C. J. What kind of habit had he? Had he black cloaths on?

J. Sikes. My lord, I cannot tell justly what cloaths he had on.

L. C. J. You have heard him speak : what said he?

J. Sikes. My lord, he never spoke to me ; it was the other man.

Harrison. What kind of man was the other? was he less than I, or taller?

J. Sikes. He was taller than you, with his own hair.

Mr. Darnell. Can you be positive that the prisoner at the bar is one of those two persons?

J. Sikes. My lord, one of those two persons had a perriwig on, of a light-coloured hair : and I do verily believe, that the prisoner at the bar is the same person ; I cannot be positive he is one of them, but as near as I can judge of a man whom I have seen but once, he is one of them.

Harrison. My lord, I desire your lordship to observe the time that he took the two men up, and what time it was they ran out of the coach.

L. C. J. Coachman, what time was it they left your coach?

J. Sikes. About half an hour past ten, and it was about a quarter of an hour past nine, when I took them up.

Mr. Darnell. Pray let's ask the coachman one thing more. Coachman, look upon that handkerchief, do you know it, and where did you see it? [The handkerchief was produced by the Coroner.]

J. Sikes. I do believe that is the same handkerchief that was about Dr. Clenche's neck when he was found murdered.

L. C. J. Call the coachman. Hark you, in what posture did you find Dr. Clenche when you came back to your coach?

J. Sikes. My lord, he was sat in the bottom of the coach, leaning on one side, with his head against the cushion.

L. C. J. Was a handkerchief then about his neck?

J. Sikes. Yes, my lord, I untied this handkerchief, and this is the same ; and here is the coal that was lapt in it : it was lapt in the middle of it, and it laid against the doctor's windpipe.

Mr. Darnell. Call Mr. Rebone and Mr. Marriott. [Who were sworn.]

Mr. Darnell. Mr. Rebone, tell what you know concerning the handkerchief, and how you found the doctor.

[He takes the Handkerchief, and looks on it.]

Rebone. This handkerchief was about the

doctor's neck, and the coal in it. And it lay just upon his wind-pipe, when I saw him dead in the coach. The coachman came to Mr. Marriot's house, and asked for a constable, and we went to the coach-side, and there we found him lying along ; and we took him, and carried him to the Bull-Inn, and there he was let blood on the arms, and the chyrurgeon took about half a spoonful of blood out of his right arm ; and he was let blood on the other arm, but that did but just trickle down, and we could not get him to life again ; and we found a silver ink-horn in his pocket, and that, and the rest of his things, were secured. This is all I can say to the matter.

Mr. Darnell. Call Mrs. Elianor Ashbolt. [Who was sworn.]

Mr. Darnell. Pray tell my lord and the court, what you know of any persons you saw in a coach at Brownlow-Street end, that night Dr. Clenche was murdered.

Mrs. Ashbolt. May it please your lordship, I went out of an errand for one madam Anwell, a gentlewoman who lodges at my mother's house ; and coming home again, I saw a coach stop at Brownlow-street end, between nine and ten o'clock at night, and the coachman went to the side of the coach : and one in the coach bade him go to Dr. Clenche's, and tell him, that there were two gentlemen stayed for him in a coach ; and as he went up the street, he went slowly, and looked back two or three times : whereupon one of the persons leaned out of the coach, and did swear at the coachman to make haste ; and I went round the coach, and could discern Mr. Harrison's face ; and I stayed, and saw Dr. Clenche go into the coach, and one of them gave his place to the doctor.

Mr. Darnell. Why were you so curious, mistress, and what did you observe further?

Mrs. Ashbolt. I thought they might give the coachman a slip. I well observed Mr. Harrison, but do not know the other man. There were two lamps burning, one in Brownlow-street, and the other in Holborn over against the end of Brownlow-street, and they lighted quite through the coach ; and the men pulled themselves backwards, when they saw me look on them : it was that night that the doctor was murdered. I went to Newgate afterwards. Madam Clenche desired me to go and see Mr. Harrison ; and when I came to Newgate, it seems he was writing letters, so I staid before I went into the room : and there were two men with me, and Mr. Harrison was talking very loud ; said they to me, who is that speaks now? why says I, it is one of the persons that was in the coach when Dr. Clenche was murdered.

L. C. J. Who are those two men that were with you?

Mrs. Ashbolt. One of them was one Mr. Jones, a coach-maker in Holborn, and the other was madam Clenche's coachman.

L. C. J. Did you know the prisoner when you saw him in Newgate, to be one of them that were in the coach?

Mrs. *Ashbolt*. Yes, I did ; I knew him to be the same man, as soon as I saw him : and he changed countenance as soon as he saw me.

Harrison. My lord, this woman is certainly hired by the villains that are against me. Pray, ask her, my lord, why she did not make a discovery sooner ?

L. C. J. Mistress, What say you to that ?

Mrs. *Ashbolt*. I acquainted madam Anwell what I had seen and observed, and then she told madam Clenche, after last sessions ; and then she desired me to go to Newgate to see Mr. Harrison, and I went accordingly ; and I should have told it to madam Clenche sooner, but my mother was loth I should be concerned about such a thing.

Mr. *Darnell*. My lord, we have some witnesses who can give your lordship an account, that one of our witnesses, whom I mentioned to your lordship before, is spirited, or withdrawn from us, by a gentleman that said he came to him from the prisoner, and desired him to be kind to the prisoner ; which witness is since absent, and not to be found : his name was Andrew Bowsell, a youth, and an apprentice to one Mr. Tims, a shoemaker.

L. C. J. You must prove upon him, that he made him keep away.*

Mr. *Darnell*. Call Barnabas Smith. [Who was sworn.]

Mr. *Darnell*. Give my lord and the court an account, what you know of this matter.

Mr. *Smith*. My lord, this Andrew Bowsell, which the counsel for the king speaks of, was sent to Leadenhall-street of an errand, to the Bull-head ale-house there. And as he was going along, a gentleman met him, and asked him, if he was not an evidence against Mr. Harrison : and being told by the boy that he was, he desired him to be kind to him ; and pulled out a piece of money, and offered it him, desiring him to be kind to Mr. Harrison. Upon which the youth replied, that he owed him nothing, and nothing he would take. Then the gentlemen told him, that he would come again at another time, and send for him near to his master's. So the boy said, and told me : and said further, that if he could have gotten him to have gone to the Bull-head ale-house, he would have seized him.

Mr. *Darnell*. What is become of the boy ?

Smith. Truly, we do not know what is become of him, we never heard of him since the 6th day of March last.

Mr. *Darnell*. Call his master, Mr. Richard Tims. [Who was sworn.]

Mr. *Darnell*. Tell my lord and the court, what you know of this matter, and what is become of your apprentice, Andrew Bowsell.

Tims. My lord, he went away from me on the 6th day of March last ; he was inticed away by three soldiers that night, and on the morrow-morning one of them came and de-

manded his coats, shirts, and neckcloths : says I to him, who sent you, and who is your captain ? and he answered, Why, captain Harris : he huffed, and said, That if I would not give him the clothes, he would send his officer ; and then I told the soldier, I would have him before a justice of the peace ; so he went away, and never came to me again : and I could never hear of my apprentice since, though I have made great enquiry after him.

L. C. J. Did your servant tell you of any money that had been offered him by the before-mentioned gentleman ?

Tims. No, my lord ; he did not tell me, but he told Mr. Smith, the witness that was last examined, as he told me.

Mr. *Darnell*. My lord, I desire that Andrew Bowsell's examinations before Mr. John Browne, the coroner of London, upon oath, may be read.*

[Which being proved by the Coroner, were directed to be read.]

Cl. of the Peace reads :

" 12 Januarii, 1691. Andrew Bowsell, servant to Richard Tims, shoemaker, sworn and examined touching the death of Andrew Clenche, doctor of physic, deceased, saith, That he, this informant, being sent to Mr. Parker's, at the Bull-head ale-house in Leadenhall-street, on Monday last was se'nnight, being the 4th of this instant January, between the hours of ten and eleven o'clock in the evening, saw a coach standing against Leadenhall-market ; and heard

* See the Resolutions in the Case of lord Morley, *ante*, vol. 6, pp. 770, 771.

In the Settlement Case of the King against Eriswell (3 Term. Rep. 707), the Pauper was insane, and the question was, whether the examination upon oath of the pauper taken before his insanity should be read in evidence. In answer to the objection, that it was taken in the absence of the parties to be affected by it, Mr. Justice Buller likened it to " the case of a deposition before a coroner, which," said he, " has been long settled to be good evidence, 1 Lev. 180. Kel. 55, though the person accused be not present when it is taken or ever heard of it till the moment it is produced against him." Mr. Peake (Law of Evidence, chap. 2, sec. 2) observes, that " certainly nothing of the kind appears in those books, nevertheless the practice has been to admit them after the death of the witness, without inquiry whether the party was present or not ; and, notwithstanding the objection of counsel, they were received by Mr. Baron Hotham in the case of King and Purefoy, Maidstone Summer Assizes, 1794." See, also, as to the admission of Depositions before a Coroner, the Argument of lord chief justice Kenyon in the case of the King and Eriswell, and the Stat. 1 and 2 Ph. & M. c. 13, as therein referred to by him. See, too, Leach's edition of Hawkins's Pleas of the Crown, book 2, chap. 46, and the books there referred to.

* As to this, see Peake's Compendium of the Law of Evidence, chap. 2, sec. 2, p. 64, edit. of 1808.

some person that was in the coach say, Make haste: and this informant says, that according to the best of his remembrance he heard him talk of a poulterer's. And this informant says, That soon after the coachman was gone into the market, this informant saw two persons go out of the coach, one whereof had, as this informant believes, a black coat on; and that this informant saw the same person, as soon as he came out of the coach, fling a cloak over him: and then both the persons went through the market on the west part. And this informant saith, That this informant going to look into the coach, the person that had the cloak on him, cry'd damn him; and this informant saith, That he, this informant, thereupon going away, went to Mr. Parker's, and told them, that two persons had cheated a coachman, or to that effect."

"And Bowsell being further examined the 23d day of January, 1691, touching the death of Andrew Clenche, saith, That he hath seen Henry Harrison, now a prisoner in their majesties gaol of Newgate, and believes he was one of the persons that came out of the coach at Leadenhall, a little after ten o'clock at night, on Monday the 4th of this instant January; and believes he knows him by his voice. And soon after, this informant understood that the said Andrew Clenche was murdered in a coach, being the same coach which the said Harrison, and another person unknown, a little before went out of."

L. C. J. Mr. Harrison, What have you to say against that which hath been proved against you? what defence can you make?

Harrison. My lord, I did attend Dr. Clenche about a mortgage that was made him by Mrs. Vanwicke, and Dr. Clenche did pay 100*l.* but this gentlewoman would pay, or allow Rowe but 15*l.* and we did not know how to get the money from Rowe, so we petitioned the lords commissioners about it, which was above six months before Dr. Clenche was murdered; and Mr. Fairbeard wondered that I would put Dr. Clenche's name into a petition with such a rogue as Rowe; and I do positively say, that I had not seen Dr. Clenche in a month before, and if Dr. Clenche had died in his bed, it had been the same thing to me; and, my lord, Mr. Johnson and I had never any angry words between us; and I have the Report in Chancery, which I had from sir John Hoskins, which I will read, if your lordship pleases.

L. C. J. Let's see it.

[Which was handed to the Lord Chief Justice, sitting on the bench.]

Harrison. My lord, that is the original, which if your lordship pleases to remember, I had Rowe before you twice about; and it is Rowe that hath been the rogue, and therefore what occasion had we to be angry with Dr. Clenche?

[Then the Report was perused by the Lord Chief Justice, and returned to him.]

L. C. J. Mr. Harrison, this will do you no good, not being to the present purpose; therefore proceed in your defence.

Harrison. Now, my lord, I have some witnesses to prove where I was at the time that the coachman says the murder was done. Crier, call Thomas Turner, a porter, and Mr. Maccaffee.

[Who appeared, but were not sworn, and examined apart, at the request of Mr. Darnell, the king's and queen's counsel.]

Harrison. My lord, I shall prove by these witnesses, that I was elsewhere when the coachman said he took up those two men, a little after nine o'clock. Pray, Mr. Turner, give an account to the court, what time it was I called you to carry my trunk.

Turner. My lord, I was, about seven o'clock in the evening the 4th day of January last, at the Two Kings and Key in Fleet-street, over against Salisbury-court; and I was told, that a gentleman at Joe's Coffee-house in Salisbury-court, wanted a porter; and I presently went to him thither, and it was this Mr. Harrison; and he bade me take up his trunk, which I did, and carried it to the Two Kings and Key, and he went with me; and he asked me to get some linen washed for him against the next day at noon; and he gave me some linen, which I carried to my wife to wash for him, and returned to him again presently; and I went with him from thence, and carried his trunk to his lodgings in Paul's Church-yard; and when I had delivered his trunk, I left them there; and then it was about eight o'clock at night.

L. C. J. At whose house was it you delivered the trunk?

Turner. My lord, it was at Mr. Jones's house in Paul's Church-yard.

L. C. J. And did he stay within?

Turner. No, my lord, he went out presently after me.

L. C. J. Were you any where else with him that night, besides at the places you have mentioned?—*Turner.* No, my lord.

Harrison. My lord, I will prove that Mr. Humston mistakes an hour.

Humston. I cannot mistake an hour, because the shop is shut up about nine o'clock, and it was shut when you came first to my lodgings.

Harrison. My lord, there stands in court one Thomas Johnson, apprentice to Mr. Pemmel; he can tell what time a night it was I came to Mr. Humston's, he let me in: I desire he may be called.

Mr. Darnell. Swear Thomas Johnson. [Who was sworn.]

L. C. J. What time of the night was it that Mr. Harrison came to speak with Mr. Humston, on that night Dr. Clenche was murdered?

Johnson. My lord, on the 4th of January last at night, Mr. Harrison came to my master's house, and knocked at the door; and I went to the door, and opened it, for I had shut

up the shop ; and he asked me if Mr. Humston was within ? and I told him, he was : and he came in, and went up to Mr. Humston's chamber ; and it was then about nine o'clock, as near as I can guess.

L. C. J. Where is your master's house ?

Johnson. My lord, it is the Golden Key in Fleet-street, over against Fetter-lane end.

Harrison. Pray call Adam Maccaffee, Mr. White, Mr. Carden, and John Allen.

[Who appeared. And Mr. Maccaffee stood up.]

Maccaffee. Upon Monday the 4th day of January last, the prisoner was at my house, and staid from nine o'clock till past eleven, and played at cards with one Mr. Baker, and one Mr. White and his wife ; and he stayed till it had struck eleven o'clock.

L. C. J. Where is your house, Sir ?

Maccaffee. My house is in Chancery-lane, over against Serjeants-inn.

L. C. J. Did he tell you where he had been before ?

Maccaffee. He said, that he had been towards the city, and was very cold.

L. C. J. Did he say any thing of Mr. Humston ?—*Maccaffee.* No, my lord.

Mr. Darnell. Pray what room were you in ? did you play at cards in the kitchen ?

Maccaffee. Yes.

Mr. Darnell. Were they up stairs ?

Maccaffee. No, my lord.

Lord Mayor. At what time a night did they come in ?

Maccaffee. Betwixt nine and ten o'clock, my lord.

L. C. J. What made you take notice of the day of the month, and hour of the day ?

Maccaffee. My lord, I heard that Dr. Clenche was murdered, and that Mr. Harrison was taxed with it ; and that made me take notice of the day.

L. C. J. Call Mrs. Maccaffee. [Who stood up.]

L. C. J. Mistress, what time did Mr. Harrison come to your house on the 4th of January last at night ?

Mrs. Maccaffee. My lord, it was near nine o'clock as any thing can be, when he came in first.

L. C. J. How long did he stay there ?

Mrs. Maccaffee. I cannot tell how long he staid, but there were two accidents happened ; one was, our playing at cards ; and the other was, that there was a pick-pocket carried by to be pumped at Lincoln's-inn ; it was from nine to eleven before he went away, and there were Mrs. White, Mr. Baker, and one Mrs. Fairelesse.

L. C. J. Did any one come with the prisoner to your house ? in what humour did he seem to be ?

Mrs. Maccaffee. No, my lord, there was no one came with him, and he never stirred out, neither did he seem to be disordered ; he was neither too merry, nor too melancholy.

L. C. J. Where did he say he had been ?

Mrs. Maccaffee. He said that he had been in the city.

L. C. J. Did he use to frequent your house ?

Mrs. Maccaffee. Formerly he did ; but I had not seen him in half a year before.

Mr. Darnell. How many were there, do you say ?

Mrs. Maccaffee. There was one Mrs. Fairelesse, and one Mrs. White, and myself, and my husband was upon the bed, and Mr. White came for his wife about ten o'clock, to come home.

Mr. Darnell. Do you remember that Mr. Baker was there ?

Mrs. Maccaffee. Yes, he was there.

L. C. J. Pray, Mistress, did Mr. Harrison come in, and find them at cards ?

Mrs. Maccaffee. No, we went to cards afterwards.

L. C. J. Where was your husband ?

Mrs. Maccaffee. He was upon the bed in the kitchen.

L. C. J. Call Mr. Baker. [Who stood up.]

Baker. This gentleman, the prisoner, is a stranger to me ; but here is a letter that he sent me two or three days afterwards. I came into Mrs. Maccaffee's house about half an hour after nine o'clock, with two women more : Mrs. Maccaffee owed me money, and I had been in Lincoln's-inn, for I do some work there for sir Thomas Cook, and the women asked me to play at cards ; and I said, that I did not care to play, because I had been abroad, and could not get any money, which made me out of humour. My lord, I never saw the man in my life before.

L. C. J. Who were they that played at cards ?

Baker. It was one Mrs. Fairelesse, the woman of the house, and Mr. Harrison, and myself.

L. C. J. Who were together ?

Baker. Mrs. Fairelesse and I, and the woman of the house and Mr. Harrison the prisoner, and we played for a penny a corner. I cannot say any more to it, my lord.

L. C. J. How long did he stay ?

Baker. I left him after ten o'clock, and, as I hope for mercy, I never saw him but once before, and I had not known him again, but by a particular token.

Harrison. Were there not some accidents happened at that time ?

Baker. Yes, there came a vintner's boy to ask for a woman, one Mrs. Frances, and he was in great haste, and a pick-pocket was carried up the lane to be pump'd at Lincoln's-Inn pump.

Harrison. Call Mrs. Fairlesse, call Mrs. Whipple. [Neither of whom appeared.] Call Mr. Sutton. [Who appeared.]

L. C. J. Where do you live, and what is your name ?

Sutton. My lord, my name is Sutton, and I live in Stone-cutter-street.

Harrison. Mr. Sutton, what time was it that I was coming by, when one Mr. Russel and you were drinking.

Sutton. My lord, it was about eleven a-clock at night, at the King's Head Tavern at Chancery-Lane end.

Harrison. What had I on, a cloak and a muff?

Sutton. Yes, I think you had a cloak on.

Mr. Darnell. What time was it? before or after eleven o'clock?

Sutton. It was about a quarter before eleven.

Lord Mayor. What day of the month was it?

Sutton. It was the 4th of January.

L. C. J. Where was he going? Which way went he?

Sutton. He was going towards Fleet-Bridge, my lord, and I called after him, but could not make him hear at first; but afterwards he came to us.

Harrison. Pray call Mr. Russel. [Who appeared.]

Russel. I can't hear, my lord, but if you please to permit Mr. Sutton to speak to me, I can hear his voice better than any man's.

L. C. J. Speak as loud as you can, Sir, and we will let you hear us; Mr. Sutton must not speak for you.

Harrison. Pray, Mr. Russel, what time of night was that you saw me go by you, when you were drinking at the King's Head Tavern?

Russel. I can't tell, my lord, I have not heard a clock these three years.

L. C. J. Where were you going at that time of night?

Russel. I was going to Wild-street to the Chyrurgeon's-Arms, to receive some money.

L. C. J. How came Mr. Sutton to go with you?

Russel. He had been with me all that day, and I desired him to go with me; and, my lord, I did expect that the money would have been brought to me, but it was not, so I went for it.

L. C. J. Well, and what then?

Russel. While we stayed at the King's-Head tavern door to drink wine, Mr. Sutton sent the drawer to call Mr. Harrison.

L. C. J. What had you been doing before that time?

Russel. We had (I suppose) been drinking together.

L. C. J. Where had you been before you came to the King's Head tavern?

Russel. We had been at the Horseshoe Tavern in Chancery-lane.

L. C. J. Did you request Mr. Sutton to go with you?—*Russel.* Yes, I did, my lord.

L. C. J. You say your business was to go to Wild-street, to receive some money?

Russel. Yes, it was, my lord, and I did receive it.

L. C. J. When was it that you met Mr. Harrison, the prisoner?

Russel. My lord, I cannot positively say, but by computation of the night, I believe it was about eleven o'clock.

L. C. J. Did you meet Mr. Harrison before you went to the Horseshoe Tavern, or after?

Russel. Afterwards, my lord, I saw Mr.

Harrison turn at the corner of Fleet-street, towards Fleet-Bridge.

L. C. J. At the time when Mr. Sutton and you went first out, did you agree of your going to the Horseshoe tavern?

Russel. We went thither to send for the gentleman out of Wild-street.

L. C. J. When you had been drinking all the afternoon, how came you to stop your coach at the King's head?

Russel. We stopt there, whilst Mr. Sutton sent for somebody to come to him.

L. C. J. You said just now, that Mr. Sutton sent for Mr. Harrison.

Russel. No, my lord, I do not remember that; but Mr. Sutton said, Harry, or Harrison, where art thou going, when he went by us.

Harrison. My lord, this man is a stranger to me. Call John Allen, drawer at the King's Head tavern. [Who appeared.]

Harrison. John Allen, what time of night was it that Mr. Sutton and Mr. Russel came to your house in a coach?

Allen. I believe it was about eleven o'clock.

L. C. J. How much wine had they?

Allen. Two half pints of Canary.

L. C. J. What night was it? What day of the month was it?

Allen. My lord, I cannot remember what day of the month, but it was that night that Dr. Clenche was murdered.

L. C. J. Did you see Mr. Harrison there?

Allen. I cannot tell that, I never saw him, till I saw him at prison.

Harrison. Did not you go to Mr. Maccaffee's house?—*Allen.* Yes, I did.

Harrison. Did not one strike you with a muff?

Allen. Yes, but I cannot remember who it was.

Lord Mayor. Look upon that man, do you know him to be the person?

Allen. No, my lord, I do not know him to be the person.

Mr. Darnell. Who sent you to Crown-Court?—*Allen.* Mr. Russel.

Mr. Darnell. For what?

Allen. For a servant maid; and he bid me tell her, that he had a desire to speak with her.

Mr. Darnell. How long did you tarry at the house?—*Allen.* I did not stay at all.

Harrison. Call Mr. Carden, drawer at the King's Head tavern. [Who appeared.]

Harrison. What time did Mr. Sutton come to your house? Did you see any one stand at the coach side? and what cloaths had he on?

Carden. I saw one stand at the coach side, and he had a hanging coat, or a cloak on; it was about the hour of eleven, to the best of my knowledge, and I saw a man go into the coach, and come out again.

Coroner. What time of night do you shut your doors, especially on Monday nights? and were they shut when Mr. Sutton called in the coach?

Carden. We shut them commonly about eleven o'clock at night, but on Monday nights

usually later; they were shut when Mr. Sutton called, and I opened them for him.

L. C. J. Can you say that the prisoner was the man that drank with Mr. Sutton?

Carden. To the best of my knowledge (looking on the prisoner) that is the man, I cannot be positive, my lord.

L. C. J. Well, have you any more witnesses?

Harrison. No, my lord, unless Mr. Essington be here; he promised to be here to give an account of me. My lord, there is a gentleman that is in the Press-Yard, one Mr. Butler, I desire he may be sent for, if your lordship please.

L. C. J. Let him be fetched down. [Which was done.]

L. C. J. But in the mean time, it behoves you to give an account of these things. First, Why did you say that you were a parliament-man? Secondly, Why did you leave your lodgings and take other lodgings in Paul's-Church-Yard? Thirdly, Why did you say that you had extraordinary business? Give some account what your business was, and who that gentleman was, that staid for you in the street; when Mr. Humston desired you to stay and sup with him, what hindered you from accepting his invitation? Now we would have you to consider of these things, and give an answer to them, for it much concerns you so to do.

Harrison. My lord, first, as to the first, I do declare, that I never went for a parliament-man, nor never said so: secondly, that night I was to go out of town, I had left word at several coffee-houses, that I was going out of town upon earnest business, and with above twenty people besides, that I was going out of town, and I was about to go to Basing-Stoke, to a gentleman that owed me money, one Mr. Bulling; but I could not get money to go.

L. C. J. Prove that you were to go into the country.

Harrison. My lord, I cannot prove that now, except I could have sent to Basing-Stoke.

L. C. J. That you should have done before now; why did you not stay with Mr. Humston, when he invited you to sup with him? You might have been better entertained there, than by going among strangers to play at cards for a penny a corner, at an ale-house.

Harrison. My lord, I was unwilling to stay, because he had strangers with him.

L. C. J. What if he had? You are not such a bashful man that you could not sup with strangers.

Harrison. My lord, Mr. Rowe was accused with me.

L. C. J. What if he was? He was under some suspicion, and he hath made it appear where he was at the time the fact was committed, and now he is discharged.

[Then Mr. Butler was brought into court from Newgate, attended by a keeper.]

Harrison. Mr. Butler, pray tell the court what Mr. Fairbeard said to you about me.

Butler. My lord, Mr. Fairbeard asked me, what I could say about what Mr. Harrison had said to me concerning the murder of Dr. Clenche? I told him, I could not tell what to make of his broken and rambling speeches and discourses, they being most of them spoken when he was in his drink. This is all that I know, my lord.

L. C. J. This is not a witness for your turn.

Mr. Darnell. Call Mrs. Anwell.

[Who was sent for from her lodgings in Brownlow-street in Holborn, and appeared, and was sworn.]

Mr. Darnell. Madam, pray give an account what Mrs. Ashbolt told you concerning any man's being in a coach at Brownlow-street end.

Mrs. Anwell. I know nothing of my own knowledge; but the night that doctor Clenche was murdered, I sent Mrs. Ashbolt of an errand; and at her return, I blamed her for staying so long; and she told me, that as she was returning home, a coach stopt at Brownlow-street end, with two men, with cloaks on, in it, and that one of them bade the coachman go for Dr. Clenche, and desired him to come to them; and in his going several times looked back, as if he suspected the men would leave the coach, and so she stayed until Dr. Clenche came and went into the coach, and that one of the men gave the doctor his place; and that one of them had a fair perriwig, and a sanguine complexion.

Mr. Darnell. What discourse had you with her when you heard that those men had murdered Dr. Clenche?

Mrs. Anwell. She told me, that one of those men had a fair perriwig, and a sanguine complexion, and that one of them had a cloak on.

L. C. J. Did she say that she observed either of their faces?

Mrs. Anwell. Yes, my lord, she said the one of them had a round face, and a big voice.

L. C. J. Did she say, she could know him again?

Mrs. Anwell. No, my lord, she did not say so, but she said, that she could know his voice again. And after the last sessions, I told Mrs. Clenche of it, and that if she would send for the young woman, she would inform her further of it.

L. C. J. Madam, pray what was the reason that she did not discover it sooner to Mrs. Clenche?

Mrs. Anwell. Why truly because Mrs. Ashbolt, her mother, was unwilling she should concern herself in such a matter.

Mr. Darnell. Call another witness, Mr. Jones, coach-maker. (Who was sworn.)

Mr. Harrison. Pray, my lord, take notice, that now she says, that those gentlemen had cloaks on, that came in the coach to Brownlow-street end.

L. C. J. Yes, we heard her what she said.

Mr. Darnell. My lord, I will ask this witness, Mr. Jones, a question.

Mr. Darnell. Pray, Sir, tell my lord and the jury, what Mrs. Ashbolt did at Newgate.

Jones. My lord, I went with her to Newgate, together with Dr. Clenche his coachman, and when she came to Newgate, before she saw Mr. Harrison, (only stood at the chamber door, and heard him speak), she said, That, to the best of her thoughts, he was the man that put his head out of the coach to look after the coachman, and swore at him, for she knew his voice. And when she came to see him, she said, that she knew his face, and declared that was the man that put his head out of the coach.

L. C. J. Did he look out of the coach, Mrs. Ashbolt?

Mrs. Ashbolt. Yes, my lord, he put his head out of the coach, and looked after the coachman, to see if he went right to Dr. Clenche's door, and did swear at him, because he went no faster.

L. C. J. How could you discern his face?

Mrs. Ashbolt. By the light of two lamps that were near, which did shine into the coach.

L. C. J. Can you take it upon your oath that the prisoner is the same person?

Mrs. Ashbolt. Yes, my lord, I can, both by his voice and face.

Mr. Darnell. Now, my lord, we shall shew your lordship somewhat in relation to the credit of those witnesses that the prisoner hath brought here; particularly as to Mr. Baker, we shall prove that he hath been convicted for a cheat. And as for Maccaffee, he keeps a very disorderly house, where ill people commonly resort.

Mr. Darnell. Cryer, call Mrs. Martha Whelstead, and Mr. Thomas Cole.

L. C. J. Mrs. Jones, what time did Mr. Harrison come to your house, to his lodging, that night that the murder was committed?

Mrs. Jones. I think it was about eleven o'clock, or little before eleven.

L. C. J. What time on the Monday did he hire the lodging of you?

Mrs. Jones. It was some time after dinner.

L. C. J. It was before night, was it not?

Mrs. Jones. Yes, my lord, it was before night.

Mr. Darnell. My lord, I desire that Mr. Tanner may read the Record against Mr. Baker, whereby it will appear, that he was indicted and convicted at Hicks's-Hall for cheating the parish of St. Giles in Middlesex, when he was scavenger there, by altering the figures in the book, and rating the sums of money higher upon divers of the parishioners, than they were in the parish book, and then collecting and extorting the money, so by him increased, from them.

[Mr. Tanner reads the Indictment aforesaid, by which it did appear to the Court, and to the Jury, that the said Mr. Baker was indicted for the offence aforesaid and confessed the indictment, and was fined for it twenty shillings.]

Baker. My lord, I was wrongfully indicted,

and traversed the indictment, and was acquitted.

L. C. J. Mr. Tanner, give me the record. [Lord Chief Justice peruses the Record.] Mr. Baker, I have read the material parts of the record, and do find that you were indicted for that offence, and that you confessed the indictment, and was fined for it.

Baker. My lord, I was acquitted of it, and can prove it by captain Cannon, who knows me and my reputation, and he is in court.

L. C. J. Mr. Baker, the record testifieth the truth, and cannot err, therefore you have great confidence to aver against it; yet I will hear what capt. Cannon saith.

Baker. Call captain Cannon. (Who appeared.)

L. C. J. Captain Cannon, do you know this Mr. Baker?

Capt. Cannon. Yes, my lord, very well.

Mr. Darnell. My lord, I desire that captain Cannon may be sworn.

L. C. J. Mr. Tanner, swear captain Cannon. (Who was sworn.)

L. C. J. Sir, do you know that Mr. Baker was indicted for falsifying of the scavenger's book when he was scavenger, and acquitted, or convicted, and what do you know about it?

Capt. Cannon. My lord, I am an inhabitant of the parish of St. Giles's in the fields, and so I was when Mr. Baker was scavenger, and do well remember, that some of the inhabitants of that division where he was scavenger were troubled, and complained that they were charged more than usually they had been to the scavenger's rate; and it was discovered that several figures of the book, by which Mr. Baker collected the money to the scavenger's rate, were blotted and altered, and did not agree with the parish leidger book, but the sums in his book so blotted and altered were razed; whereupon it was ordered, that he should be indicted for it: and it was done accordingly, and he was fined for it, and, to the best of my remembrance, he confessed that indictment.

L. C. J. Captain Cannon, pray tell the court and the jury, of what reputation Mr. Baker is now.

Capt. Cannon. My lord, he is now of none of the clearest reputations.

Capt. James Patrich, of the same parish, being in court, offered himself, and gave the same account of Mr. Baker that captain Cannon did.

Mr. Darnell. Cryer, call Mr. Francis Bramton, Mrs. Martha Whelstead, and Mr. Thomas Cole.

(And Mrs. Whelstead and Mr. Cole appeared, and were sworn.)

Mr. Darnell. Mrs. Whelstead, pray give the court and jury an account what disorderly house Mr. Maccaffee keeps.

Mrs. Whelstead. My lord, I dwell in Crown-Court in Chancery Lane, over against Mr. Maccaffee's house; and he and she are very ill people; and keep a very evil and scandalous house; and such as are reputed to be

house breakers, pick pockets, and lewd women, do use and frequent the house; and there is commonly at late hours in the night, persons calling out murder, and whore and rogue, and such sort of language, disturbing their neighbours; and their house hath been several times searched by several constables for stolen goods, and for the persons that have stolen them; and upon such searches, there have been stolen goods found there: And I have seen great lewdness there between men and women; and the neighbours do account it a house of an ill fame, and do avoid going thither.

Mr. Cole. My lord, I do not know Mr. Maccaffee and his wife; I do dwell over against his house, and they are reputed to keep an ill house, and most persons that frequent it are reputed to be persons of lewd and evil lives and conversations; and it is amongst the neighbourhood noted for a scandalous house, and several constables have several times searched there for stolen goods.

L. C. J. What have you more to say, Mr. Harrison?

Harrison. I cannot say any thing more; you may deal with me according to my deserts in this manner.

L. C. J. You may assure yourself that we will do you no wrong; have you any more to say? (He made no reply.)

Mr. Darnell. My lord, we have another witness come now, who was not here before. Cryer, call Mr. Charles Whitfield. (Who was sworn.)

Mr. Darnell. My lord, this gentleman can give your lordship an account what the prisoner said of his being just come out of the country, upon the 5th day of January last. Pray tell my lord what you know, Sir.

Whitfield. My lord, upon the 5th day of January last, being the day after Dr. Clenche was murdered, I went to Joe's coffee house in Salisbury court, and there was Mr. Harrison sitting by the fire side. Says I to Mr. Harrison, where have you been for a long time that I have not seen you? Says he, I have been in the country. Where, says I? Says he, about 20 miles off, in Kent; and I want a laundress and a lodging. Says I, Do you hear the news, Sir? What news, says he? why, said I, of Dr. Clenche's being murdered: I cannot tell the occasion, said I, but he was found dead in a coach last night in Leadenhall-street. Then says he, I did love him very well once, but of late he hath been a barbarous rogue to a gentlewoman, a friend of mine, and she is in the Compter now; And Mr. Harrison said it was a just judgment of God upon the doctor for being so great a villain to the gentlewoman; therefore I will write to her presently, and give her an account of his death. And, my lord, the contents of his letter were these, as near as I can remember.

'Madam,

'I am just now going to Lambeth; but
'hearing of Dr. Clenche's murder, I do hereby

'give you an account of it, and can impute it
'to no less than a just judgment of God upon
'him for his baseness shewed to you. And if
'you think fit to send to madam Clenche, it
'may be, she may send somewhat towards your
'relief, she now being a widow as well as you.
'Madam, I am yours to command,

'HENRY HARRISON.'

My lord, after this came into the same coffee-house another person, one Mr. Ravenscroft, of whom Mr. Harrison asked some question about Dr. Clenche; who replied, that he heard that Dr. Clenche was murdered, and that it was committed by a bully of the town that belonged to a gentlewoman in the compters, who was laid in there upon Dr. Clenche's account; at which he was much startled: Says he again, there is no person familiar with that gentlewoman but myself; for I know and am concerned in all her affairs: Perhaps then I may be taken up about it; Or, my lord, he used words to that effect.

Harrison. My lord, this woman was not in the Compter upon Dr. Clenche's account.

L. C. J. No, the witness don't say so; but that it was the discourse of the town that she was, and the town did suppose her so to be. What did he say further, Sir?

Whitfield. My lord, he said, That he had been in Kent about twenty miles off: and he said, That he wanted a laundress, because he had some foul linen to wash; which he produced. This was on the Tuesday, and the murder was committed on the Monday night before: And, my lord, there were two more gentlemen that heard him as well as I, that he said, That he had been about twenty miles off in Kent, and that he was newly come to town. Now, my lord, I could not imagine for what reason this man should say, that he had been out of town about a fortnight or three weeks, when he was in that house but the Monday night before; that is, the night the murder was committed.

Mr. Darnell. Cryer, call Mr. Bishop. [Who appeared and was sworn.]

Bishop. About three years ago the prisoner came to my master's shop to cheapen some linen, and when—

L. C. J. Hold, what are you doing now? Are you going to arraign his whole life? Away, away, that ought not to be; that is nothing to the matter. Have you done, prisoner?

Harrison. Yes, my lord, I have done, I refer my cause to your lordship.

L. C. J. Gentlemen of the Jury; The prisoner at the bar, Henry Harrison, stands indicted for the wilful murder of Dr. Andrew Clenche, who was barbarously murdered on the fourth day of January last: You have heard the witnesses that have been sworn; and upon their testimony, it doth appear, that two persons came to Brownlow-street end in a coach, after nine o'clock at night, and sent the coachman to the doctor's house, under pretence to get him to a patient, a friend of their's, that was sick. By this contrivance, they got him

into their coach, which they had brought for that purpose, and then they ordered the coachman to drive to Leadenhall-street; and when they came about Holborn-bars, one of them asked the coachman, why he drove so slow, and bade him drive faster. When they came to Leadenhall-street, then they bade him drive to the Pye Tavern without Aldgate; where one of them bade the coachman ask for one Hunt; but he not being there, one of them bade the coachman return back, and gave sixpence to the watch to come through the gate, which was shut in the mean time; and when they came to Leadenhall-market, one of them gave the coachman three shillings and sixpence, and sent him to buy a couple of fowls; which the coachman did buy, and brought them to the coach; but when he came back, he found the doctor in the body of the coach, leaning against the fore-seat of the coach, a handkerchief being tied about his neck with a coal in it, placed upon his wind-pipe; which handkerchief and coal have been produced in court.

The question is, gentlemen, Whether the prisoner at the bar be guilty of this base and barbarous murder? To prove which, there hath been a very long evidence given, some positive, some circumstantial. It has been proved that Dr. Clenche had some dealings with a woman named Vanwicke, and had lent her one hundred and twenty pounds, and had taken a mortgage for it. This prisoner, Mr. Harrison, was a great acquaintance, and very intimate with this woman; and did concern himself in the management of her affairs: and because Dr. Clenche did refuse to lend the woman more money, therefore he had an animosity against Dr. Clenche. The money not being paid to the doctor as he did expect, he did call it in; and therefore this gentlewoman did oftentimes repair to Dr. Clenche to desire farther time of forbearance, because she could not raise or procure the money elsewhere. That about Michaelmas last, it seems, she came to a coffee-house near Warwick-house in Holborn, and there was Mr. Harrison; where they consulted what to do. And it was agreed, that the mistress of the house, and Mrs. Vanwicke, should go to Dr. Clenche's; but Mr. Harrison should stay behind, for it was not thought convenient that he should go, lest he should provoke the doctor. When they came to the doctor, Mrs. Vanwicke was very importunate to have more money; but the doctor would lend her no more. And when they returned to the coffee-house again, Mr. Harrison enquired what passed between the doctor and Mrs. Vanwicke. She told him, that the doctor would not furnish her with any more money, although she had pressed him to do it, and urged her great necessities, but advised her to go to service. Damn him, says Harrison, does he say that a woman of your quality should go to service? He is a great rogue, and deserves to have his throat cut; but let me alone, I will manage him.

VOL. XII.

At another place there was a discourse betwixt Mr. Harrison and one Mr. Johnson; and that the prisoner did then speak very hard and ill words of Dr. Clenche: And that Mr. Harrison came frequently to him; and one time laid his hand upon his sword, using some menacing words, but what they were he cannot tell: But he likewise says, That at several times he did expostulate with him, and told him, That he would not do any good with such discourses as these are, &c. That the mortgage money not being paid, it was thought fit, that there should be a prosecution made to get possession of the mortgaged estate, and that the tenants should be forbid to pay their rents. And Mr. Harrison went to Mrs. West, the tenant, some few days before St. Thomas's day last, and demanded the rent of her. To which she made answer, That Dr. Clenche had forbid the payment of the rent to Mrs. Vanwicke. Thereupon Mr. Harrison grew very angry, and answered, That Dr. Clenche was a rogue and a villain, and bid her that she should not pay him any rent. And the witness saith further, That the doctor being pressed to let her have some more money, refused to do it, because she would spend it all upon Harrison.

Then the counsel for the king called some witnesses, who gave you an account of the prisoner's shifting his lodgings the day before the murder was done. He takes a lodging at Mr. Garway's in Threadneedle-street, on the 23rd day of December, and there he continued till about the 1st of January. The 2nd of January he was at Garway's shop; and on the Sunday night he came and fetched away his things. The Monday after, being the day that this barbarous fact was committed, he sent a letter to Mrs. Garway, to acquaint her that he was gone out of town; but he left three half-crowns with her maid to pay for his lodging. But as to his going out of town, it was false, for he never went into the country; but took a lodging at Mr. Jones's in St. Paul's church-yard. It is observable also, that he went for a parliament-man when he lodged at Mr. Garway's, and had his footman to attend upon him, &c. There it was that he was seen to have an ordinary handkerchief, and to hold it to the fire; which was taken notice of by Mrs. Jackson, the daughter of Mrs. Garway, which was not suitable, as she thought, to a parliament-man's quality, but rather fit for a seaman; for it was like the apron of the maid of the house: which hath been shewed in court, and compared with the handkerchief that was tied about Dr. Clenche's neck. She saith it is the same, or very like that which she did see Mr. Harrison hold in his hand.

Cartwright, the officer at the Compter, he tells you that the Sunday night, the day before the murder, Mr. Harrison came to Woodstreet compter, and enquired for Mrs. Vanwicke, and that he only was in her chamber, and no other body on that side of the house but Mrs. Vanwicke, the prisoner; and this Cartwright the keeper, who stood at the door, and heard Har-

5 K

rison say, that he would have the blood of that rogue, and named Clenche or Winch.

Harrison. My lord, he was not in the room.

L. C. J. No, he was not ; but there were none on that side the house but you, Cartwright, and Mrs. Vanwicke.

Now, on the Monday, on which this fact was committed, he having taken a lodging at Jones his house, he came thither with a porter, who brought his portmanteau-trunk about eight a-clock at night ; and after he had been there a little while he went away.

And you are told by a gentleman that lodges at the Golden-Key against Fetter-Lane end ; that he had some acquaintance with the prisoner ; that he had lent him a morning-gown ; and that about nine o'clock that very night, he came to his lodging in a cloak ; and then the gentleman asked him for his gown ; and he told him that he had brought it with him. Thereupon the gentleman invites Mr. Harrison to stay and sup with him. Mr. Harrison said, he could not stay, for he was engaged ; he must be gone, for that a gentleman staid in the street for him to go about extraordinary business.

The coachman tells you, that near about that time two men in Fleet-street, near Fetter-lane end, hired his coach of him to go to Brownlow-street to Dr. Clenche's ; but he cannot positively say, that the prisoner at the bar was one of them, but he swears he does verily believe that he was one of them.

Harrison. He said before your lordship, that he could not remember what I had on.

L. C. J. Well, well, he doth not remember it now ; but being hired to go to Dr. Clenche's, he drove to the street-end, and no further, because the gate at the lower end was shut up, and he could not turn his coach in the street ; but he was sent by them to the doctor's, to desire the doctor to come out to them, and they sat in the coach in the mean time. The doctor made haste, and went to them immediately, and they drove away to Leadenhall, and then to Aldgate, and they called at the Pye-tavern, and enquired for one Mr. Hunt a chyrurgeon, as I mentioned to you before : he not being there, they returned to drive through Aldgate, gave the watch six-pence, and passed through the gate without any manner of notice taken ; but if the watch had done their duty, it might have been better discovered. But further, the coachman tells you, that when he came to Leadenhall-street they called to him, and directed him to buy one fowl ; and after that he had been gone a little way from the coach, they called him back, and bade him take some more money and buy two fowls. So he went and bought the fowls ; but when he came back, the two gentlemen were gone, and he found the doctor still in the coach ; and he not stirring, he thought he had been in drink ; but upon further examination, and calling the watchman with his candle, it appeared that the doctor was strangled with a handkerchief and a seal.

There is one Mrs. Elianor Ashbolt, who lives in Brownlow-street with her mother, and had been sent of an errand ; and between nine and ten of the clock at night, she saw the coachman in Brownlow-street, and thought that those men in the coach might have put a trick upon him, by going away without paying him his fare. And she says further, that by the help of the lamps, she did discern the face of this Harrison in the coach ; he had a cloak on, with a light perriwig, and looked out of the coach, and did swear at the coachman ; and by this means she knew him when she saw him again, to be the same man both by his face and voice. This woman, indeed, was not before the coroner, and she gives you this reason for it, because her mother was not willing she should be concerned in such a matter as this was ; and what she could say, was not known to Mrs. Clenche until after the second sessions ; and when he was in Newgate, she saw him there, and declared he was the same man.

There was another piece of evidence, viz. That of the boy's, who does not appear ; he was examined before the coroner. There has been evidence given of ill practice to take him out of the way, and therefore his affidavit is read for evidence : he swears he saw two gentlemen come out of the coach when it stood in Leadenhall-street, and that having seen the prisoner in Newgate since, doth believe him to be one. This, gentlemen, is the sum and substance of the evidence for the king, to prove that the prisoner was one of those that committed the murder.

You have heard likewise what the prisoner says for himself ; he does undertake to prove that he was in another place ; (that is) that he should come into Maccaffee's house in Crown-court, over against Serjeant's-Inn, in Chancery-lane : and Maccaffee, he tells you, that there were some other company there, and that Harrison came in very cold, and that they went to cards, and played for one penny a corner at whist ; and that he did continue there from nine till eleven a-clock ; and if he was there then, it is impossible he should be guilty of this fact, for the fact was done between the same hours.

Maccaffee's wife tells you the same, and they both tell you who were there besides, and who played together, and are positive that the prisoner was there.

Baker says, that he went away about half an hour after ten at night, and left Harrison behind him. To confirm this evidence, they have called two other witnesses, besides the drawers at the King's-head-tavern, viz. Mr. Sutton the chyrurgeon, who lives in Stone-Cutter's-street, and Mr. Russell. Mr. Sutton says, they had been at the Horse-Shoe-Tavern in Chancery-lane, and called for half a pint of sack at the King's-Head-tavern when they came by ; and as they sat in the coach, Mr. Harrison came by accidentally, and one of them looking out of the coach cries Harry or Harrison ; and he

went to them, and they drank together another half pint of sack.

As to their meeting with Harrison, and as to other passages there, Russel says the same: but as to the time of night he is not positive. And they sent one of the drawers to a house in Crown-court to enquire for somebody there.

The drawers at the King's-head-tavern say, that Mr. Sutton and Mr. Russell did call there about that time; and that they drank two half pints of wine: and that when they were drinking, a man came by with a hanging-coat or cloak on, and drank with them. And one of the drawers went to call somebody in Crown-court; and one of the company up with his muff, and gave him a slap in the face.

Now this is the sum and substance of the evidence that you have heard on the behalf of the prisoner, to induce you to believe that he was not the person that was concerned in the murder of Doctor Clenche.

To which evidence, an answer hath been offered;

First, as to those witnesses, Maccaffee and his wife; divers witnesses have been produced to prove, that they are people of doubtful credit; it seems they keep an house of ill fame.

Harrison. I am glad, my lord, that I was there.

L. C. J. Well, well, gentlemen, the people of the house are not of very good reputation; they keep a naughty and disorderly house, (if you believe the witnesses) you may consider of their credit.

And as to Mr. Baker; about nine years since he was convicted of an arrant-cheat, which is no less than forgery, for altering the scavenger's rate for St. Giles's parish, and therefore the less credit is to be given to his evidence; for now it appears, that he is a knave upon record: and the very record itself was produced against him, which is true without doubt, notwithstanding his pretence of innocency. What is said by Mr. Russell and Mr. Sutton, I must leave to your consideration; they had been a drinking, and the drawer says, they were at the King's-head-tavern at eleven of the clock at night. Mr. Harrison, the next day after the murder, met a gentleman at Joe's coffee-house in Salisbury-court; and though he had taken a lodging in Paul's church-yard, yet he said, that he was newly come to town, and had been in Kent, and had remained there about three weeks; and that he wanted a laundress and a lodging, although he had not been out of town, and had taken a lodging but the day before; and then he told the witness, who discoursed with him about the death of Dr. Clenche, that he had formerly loved him, but he said he had been of late a barbarous rogue to a poor gentlewoman, a friend of his; and that the just judgment of God had fallen upon him for so doing, and that he would write to her to give her an account of it, and advise her to write to Mrs. Clenche, and to tell her, that she was a widow now as well as Mrs. Vanwicke; and he thought by that means to move Mrs. Clenche

to pity her, being a widow as well as herself, and that whilst they were talking thus, one Mr. Ravenscroft tells him, that Dr. Clenche was murdered, and that a bully of the town, that belonged to a gentlewoman in the compters, one Mrs. Vanwicke, was suspected. At which Mr. Harrison was much startled, and said, that no one was concerned with that gentlewoman but himself; and for aught he knew, he might be taken up for it. This is that which he said.

Now what said Mr. Harrison further for himself? Why, says he, this gentlewoman is not in prison at the prosecution of Dr. Clenche, and was not so affirmed, but so reported; and whether it were so or no, is no great matter. Gentlemen, you ought to consider of the evidence that you have heard against him, and also to weigh well the evidence he hath brought for himself.

It is most plain, if you believe the witnesses, that Mr. Harrison was concerned for this woman Vanwicke, and hath threatened Dr. Clenche, called him rogue and rascal, and said, that he deserved to have his throat cut; that Harrison went under a disguise for some time before the murder. You have had an account of the handkerchief, what kind of handkerchief Harrison had, and what handkerchief was taken about Dr. Clenche's neck you have seen: and you heard what evidence was given by Mr. Humston; how the prisoner was with him about nine a-clock that night; and how he refused to stay and sup with Mr. Humston. If Mr. Harrison had no earnest business, one would have thought he might have staid with Mr. Humston, better than to have gone to an ale-house in Crown-court, and played at cards at one penny a-piece a corner; he might have had better fare, no doubt.

The witnesses for the prisoner say for him, That he came to Maccaffee's house about nine a-clock at night, and staid till eleven: that is contrary to that evidence given for the king, viz. That he was in the coach at Brownlow-street end; for if he was at Maccaffee's house all the time they mention, it is impossible he should be guilty. All these things are under your serious consideration. You had best go together, and if you are not satisfied upon the evidence you have heard, that he is guilty, then you ought to acquit him; but if you are satisfied that he did commit this murder, then you ought to find him guilty.

Then the Jury withdrew, and the Court adjourned for half an hour; and when they were returned, the Jury came to give their verdict; and being called over, answered to their names; and Mr. Harrison was brought to the bar.

Cl. of Arraign. Gentlemen, are you all agreed of your verdict?—*Jury.* Yes.

Cl. of Arraign. Who shall say for you?

Jury. Our foreman.

Cl. of Arraign. Henry Harrison, hold up thy hand. [Which he did.] Look upon the prisoner. How say you? Is he guilty of the felony and murder whereof he stands indicted, or not guilty?

Foreman. Guilty of wilful murder.

Cl. of Arraign. What goods or chattels, &c.

Foreman. None that we know of.

Major Richardson. Look to him, he is found guilty of wilful murder.

Cl. of Arraign. Then hearken to your verdict, as the court hath recorded it. You say that Henry Harrison is guilty of the felony and murder whereof he stands indicted; but that he had no lands or tenements, goods nor chattels, at the time of the felony and murder committed, nor at any time since, to your knowledge: and so you say all?

Jury. Yes.

Then the prisoner was remanded to Newgate, until the last day of the sessions; and then he was brought to the bar, to receive sentence of death.

Cl. of Arraign. Henry Harrison, hold up thy hand. [Which he did.] Henry Harrison, You stand convicted of felony and murder, for the murder of Dr. Andrew Clenche: what can you say for yourself, why judgment should not be given against you, to die according to law?

Deputy Recorder. Mr. Harrison, you have been indicted, arraigned, and convicted of felony and murder, for the murder of Dr. Andrew Clenche; you have had as long, and fair, and favourable a trial, as any person that ever hath been tried at this bar. The jury that has passed upon your life and death hath convicted you, and the court are now ready to do their last act, which is to pronounce that sentence that the law does inflict upon such crimes as you stand convicted of.

Harrison. I expect no mercy here, therefore I humbly desire you would intercede to the queen, that I may have twelve days allowed me, in order to my better preparation for death.

D. Recorder. Well.

Harrison. I must needs acknowledge, that I was tried before the best of judges, my lord chief justice Holt; but one thing I think strange, that my witnesses should be examined singly, and not the king's.

D. Recorder. That is no more than what is usual; the counsel for the king and queen requested it, and you did not.

Harrison. I begged that I might have timely notice of my trial, and I had not: there were seven people in my company at that time when this black and bloody murder was done, and I could not get them to be here.

D. Recorder. You have had a long time to get them ready, and you pressed on your own trial, which you should not have done if you had not been ready.

Harrison. I humbly submit.

Then the usual Sentence of Death was pronounced against him, and he was remanded to Newgate.

The EXAMINATION of HENRY HARRISON, this 6th day of January, 1691.

"This Examinant being asked where his

lodgings are, answereth, That he lodgeth at the Golden-ball in Paul's church-yard, and came to lodge there on Monday night, about eleven of the clock, or half an hour after, but took the lodgings in the morning, the master of the house being one Mr. Jones, a cane-chair seller; and before that time this examinant lodged at the Hand and Apple near the Exchange, which said lodgings he left on Saturday last in the morning, and paid for them on Sunday afternoon: and this examinant saith, that on Saturday night last he lodged at the White Balcony in Old Southampton-Buildings, the mistress of the house being one Mrs. Pitts, and this examinant lodged there on Sunday night also. And this examinant saith, That he was at the King's-Head in Crown-court in Chancery-lane upon Monday last, from between seven and eight of the clock at night, and stayed there until eleven, playing at cards with the man and woman of the house, and other persons unknown. And being asked where he dined on Monday, and how he spent his time on Monday in the afternoon, he saith, he cannot give an account. And this examinant saith, That on Tuesday last Mr. Hartly of Old Southampton-Buildings, discoursing concerning the murder of Dr. Clenche, said, That this examinant was suspected to be guilty of that murder. And this examinant further saith, That he wore the same cloaths he hath now on upon Monday last; and hath worn them a great while, having no other cloaths to wear.

"Capt. et Cognit. 6 Die HEN. HARRISON.
Jan. 1691; Coram, J. HOLT."

He was afterwards executed, pursuant to the sentence, and died asserting his innocence to the last.

A True Account of the Behaviour, Confession, and Last Dying Speech, of Captain HARRISON: Together with the PAPER writ by his own Hand, and delivered to a Minister at the Place of Execution, on Friday the 15th of April, 1692. [By Samuel Smith, Ordinary of Newgate.]

HENRY HARRISON found guilty of the wilful, barbarous murder of Dr. Clenche. He was bred up a lawyer's clerk; afterwards he listed himself to be a trooper in the lord Dartmouth's regiment. Upon the 10th of January last, he offered to discourse with me upon the cause of his confinement: I desired that whatever he said, he would do it in the presence of the heart-searching God, and as if he were at the point of death: he did profess he would do so. He said, that he had been arraigned before for murder; but it was only found Manslaughter: that he did not after this walk so circum-spectly as he ought, but was guilty of prophaning the Sabbath, and many gross sins, which he lived in very securely; but that God by this distress had awakened him to call to mind those great sins which he had committed, say-

ing, that God had strange ways to bring sinners to repentance. Upon this I advised him sincerely to justify God, as righteous, in finding him out in his iniquities; or else death would be more terrible, and his eternal state very hazardous, if he now trifled with God, and did not ingenuously confess his sinful course of life. Hereupon he spoke very vilely of himself, as having been of a dissolute life; that he seldom minded the public worship of God, nor the private duties of religion; that he was a common swearer in ordinary discourse, and guilty of notorious sins; that he never received the Sacrament of the Lord's Supper, because it is an obligation to amend an evil life; which he being accustomed unto, he forbore the Sacrament, that he might not aggravate his sins and future condemnation. I told him, that his being unwilling to come under such a sacred tie of reformation, exposed him deeper into Satan's snares of temptation.

After this he freely acknowledged, that he had some acquaintance with Dr. Clenche, and too much familiarity with the woman to whom the doctor lent money; and that upon his not liking of the security given for the repayment, the doctor would not forbear any longer: Harrison said, this did fret him, yet he used no threatening words; and said, that if his son had been accessory to so barbarous a murder, and himself knew it, he would discover him. Harrison made frequent appeals to God, that he knew nothing of this crime, in thought, word, or deed. I replied, That if he made any false appeal to God, it would very much hazard his salvation; yea, that this would bring swifter destruction upon him; and that his persisting to deny the murder, would make him to be less credited; because two persons who lately murdered their wives, imprecated themselves if they knew any thing of it, and yet, after an hour's denying of it at the place of execution, confessed it at last. I told Mr. Harrison, that he would be an inveterate Atheist, if he should dare to die with an execrable lie in his mouth: he said, after all advice, that he would at his death deny that he knew any thing of the murder of Dr. Clenche: he confessed, that he could not reflect on the justice of the court nor the integrity of the jury in their verdict, who had proceeded according to what was deposed against him; and that he expected that the sentence of death would pass upon him; yet he blames the witnesses for their being so positive in their allegations against him, when himself is clear of murder in his conscience: he said, that God had justly suffered a shameful death to befall him, because he lived so long in an habituated

course of viciousness, without any remorse for it till now.

This is all the Account I can give of Mr. Harrison; though I frequently, with others, solicited him to an ingenuous and free confession of his crime, assuring him, that if he durst die in the denial of it, by any mental reservation, or equivocation, he would merely ruin his soul eternally.

A COPY of the PAPER writ by Captain HARRISON's own Hand, and delivered to a Minister at the Place of Execution.

Now I am come here to die, the people expect a speech and confession; for the words of dying men always ought to be believed by the survivors. I thank God, I am not an Atheist, nor a man that makes equivocations or mental reservations; but was educated in the Protestant religion. The greatest grief I have (next unto my offending my great and gracious God) is that of my relations; for no disaster was ever in the family before, (but I pray God give them comfort) being all of them people of reputation, as is well known to a great many in this town, I having had some differences with some of them. I do own I lived for some time an irregular life, which was displeasing to them; God forgive me for it: and it was for my sins God thought fit, out of his infinite justice, to suffer this heavy affliction to come upon me; which I firmly believe tends for my everlasting salvation, through the merits and mediation of Jesus Christ my Saviour, who came into the world to save sinners, and me the chief, as I have acknowledged and reputed myself; I assuredly now hope for mercy at his hands, being innocent of this black, bloody, inhuman murder I now die for, in thought, word, or deed, heartily forgiving those that were the authors of it; as also pray to God to forgive them, as I humbly beg of those I have in any wise wronged to forgive me; desiring all that see me this day to live a godly, righteous, and sober life, to the end that they may attain everlasting life, through Jesus Christ our Lord. Amen.

God bless the king and queen, and the present government, my judges and jury; the rest I refer to a small treatise I have left with my friends, concerning the occasion why I was suspected to be one of the murderers of Dr. Clench; which I have desired them to publish very suddenly after my death. Farewel, in the name of God. Amen.

God reward all those worthy divines who have assisted me in my heavenly journal since my condemnation.

368. The Trial of JOHN COLE, at the Old-Bailey, for the Murder of Andrew Clenche, Doctor of Physic : 4 WILLIAM & MARY, A. D. 1692.

Judges present { Mr. Justice Dolben, and
Mr. Justice Powel.

THE keeper of Newgate did, according to order of the Court, on Friday the 2d day of September, 1692, bring up the body of John Cole to the sessions-house in the Old-Bailey, London; who, being at the bar, was arraigned upon an indictment of felony and murder, found against him by the grand jury for the city of London, for the murder of Dr. Andrew Clenche.

Cl. of Arr. John Cole, hold up thy hand. [Which he did.] You stand indicted by the name of John Cole, of London, labourer, for the murder of Dr. Andrew Clenche, &c. and the Indictment is in such manner as that against Mr. Henry Harrison. How say you, John Cole, are you guilty of the felony and murder whereof you stand indicted, or not guilty?

Cole. Not Guilty.

Cl. of Ar. Culprest, how will you be tried?

Cole. By God and my country.

Cl. of Ar. God send you a good deliverance.

And afterwards the said John Cole was brought to the bar upon his trial: and those persons who were returned upon the Jury were called over twice, and their appearances recorded.

Cl. of Ar. You, John Cole, these men that you shall hear called, and personally do appear, are to pass between our sovereign lord and lady the king and queen and you, upon trial of your life and death; if therefore you will challenge them, or any of them, your time is to challenge them as they come to the book to be sworn, and before they be sworn.

Then the Jury were called, and sworn, and then were counted, and the twelve sworn were these whose names follow: John Clay, Edward Sherlock, John Ruddyer, Benjamin Evans, George Bestow, Archibald Wilson, Cuthbert Lee, Thomas Watson, Thomas Milburne, Thomas Applebury, Nicholas Harris, Ralph Cates.

Then Proclamation for Information and Evidence was made as is usual.

Cl. of Ar. John Cole, hold up your hand.

[Which he did.]

Gentlemen, you that are sworn, look upon the prisoner, and hearken to his cause. He stands indicted by the name of John Cole, late of London, labourer, &c. as in the indictment. Upon this indictment he hath been arraigned, and thereunto hath pleaded not guilty; and for his trial hath put himself upon God and his

country, which country you are. Your charge is to inquire whether he be guilty of this felony and murder whereof he stands indicted, or not guilty. If you find that he is guilty, you are to inquire what goods or chattels, lands or tenements he had at any time of the felony and murder committed, or at any time since. If you find him not guilty, you are to inquire whether he fled for it. If you find that he fled for it, you are to inquire of his goods and chattels, as if you found him guilty. If you find him not guilty, nor that he did fly for it, you are to say so, and no more; and hear your evidence.

Cl. of Ar. Crier, call Mary Milward, Joseph Dudley, John Dudley, Jane Warren, Sarah Duely, Anne Gunn, Anne Gesson, Anne Warren, Elizabeth Harper, Mary Edwards, John Gamble, John Sykes, Robert Rebone, Richard Eades, Richard Marryot, Samuel Revet, Henry Milward, Squire Dalley, William Brown, Francis Hobbs. Who were all sworn.

Cl. of Ar. Set Mary Milward up.

Just. Dolben. What have you to say, woman, against Cole the prisoner, concerning the murder of Dr. Clenche?

Mrs. Milward. My lord, my husband declared to me, that he and Mr. Cole were in the coach with Dr. Clenche, and that they two killed Dr. Clenche.

Just. Dolben. That is no evidence at all, what your husband told you; that won't be good evidence, if you don't know somewhat of your own knowledge.

Mrs. Milward. My lord, I have a great deal more that my husband told me to declare.

Just. Dolben. That won't do; what if your husband had told you that I killed Dr. Clenche, what then? That will stand for no evidence in law: we ought by the law to have no man called in question, but upon very good grounds, and good evidence, upon oath, and that upon the verdict of twelve good men. Have you any body that can prove any thing against Cole, or does it all arise barely from your husband's report?

Mrs. Milward. My husband declared that he and Mr. Cole were to go under a pretence to rob the doctor, and so take their opportunity to kill him; and the first time they called at Dr. Clenche's he was not within, but the second time they went he was within, and then they did the murder.

Just. Powel. When died your husband, mistress?

Mrs. Milward. The 23d of May last, Sir.

Just. Dolben. Here hath been two or three sessions since that time, why did not you take up Cole about it before now?

Mrs. Milward. I did not know where to find him.

Just. Dolben. Why then you should have gone to a magistrate, and told him of it, and taken some advice about it.

Mrs. Milward. I did, as soon as I had found Mr. Cole.

Just. Dolben. Your business had been to have discovered this to Mrs. Clenche, and she should have looked after Cole. Is Mrs. Clenche here?

Sir W. Ashurst. Here is her brother-in-law.

Just. Dolben. Do you prosecute Cole upon this indictment?

Mr. Wise. No, my lord, I do not. Mrs. Milward is the prosecutor, and she charged Mr. Cole with the murder of my brother, Dr. Clenche; and she told my sister Clenche, that Mr. Milward, her husband, confessed and said some time before his death, that he and Mr. Cole murdered Dr. Clenche in a coach: and Mrs. Milward said, that she had sufficient evidence against Mr. Cole for it. And my sister Clenche told Mrs. Milward, that Mr. Harrison murdered Dr. Clenche in a coach, together with another person, which my sister Clenche said she believed was the said Mr. Milward, husband of the said Mrs. Milward; and that she had a warrant against him, the said Mr. Milward, upon suspicion for it, but could not take him; and that she suspected that there were other persons contrivers or concerned in it, who were set down at the Blue Boar's-head alehouse near Clement's-inn, by Mr. Gamble, a coachman, out of his coach, together with the said Mr. Milward, in their return from Dr. Clenche's house that night he was murdered. And, my lord, by my sister Clenche's order, I went with Mrs. Milward to all her witnesses, and took notes of their evidence; and I went with several of them to my Lord Chief Justice Holt's chamber, before whom they gave in their informations upon oath about it: and when I had done it, I told Mrs. Milward I could find no evidence that she had against Mr. Cole, more than that he was at Dr. Clenche's house, and at the said Blue Boar's-head alehouse, with Mr. Milward, and another person, that night Dr. Clenche was murdered; and so he might be concerned in the contrivance of it; whereupon Mrs. Milward was dissatisfied, and said, she was not able to prosecute him for it: so my sister said to Mrs. Milward, that she might, if she would, prefer an indictment against him for it, and that she would pay for it, and other charges about it, which she did. And Mrs. Milward hath a note of the names of all her witnesses, and may call them,

Sir Rob. Clayton. Did you not lie at Cole's house, mistress?

Mrs. Milward. Yes, Sir, I did.

Just. Dolben. Why did you not take him then?

Mrs. Milward. Because he absconded himself, and gave out that he was gone to sea.

Just. Dolben. Was there no quarrel between Cole and you about your goods?

Mrs. Milward. No, my lord, I had no quarrel with him.

Just. Dolben. Because you did not do it sooner, have you not been troubled with your husband's ghost? tell the jury the story; we have heard on't: but I am afraid they will laugh at you.

Mrs. Milward. That was very true, my lord.

Just. Dolben. Well, if you have any thing else to say that is material, speak; otherwise, my brother and I are of opinion, that what you have already offered is no evidence.

Mrs. Milward. My lord, here is a coachman or two that can acquaint your lordship of the matter of fact better than I can.

Cl. of Arr. Crier, call John Gamble, the coachman. [Who stood up.]

Just. Dolben. You, coachman, do you know the prisoner?

Gamble. No, my lord, I do not know him.

Just. Dolben. Look upon him, do you know him or no?

Gamble. No, truly, my lord, I do not know him.

Just. Dolben. Why, look you, woman, he does not know him! You, coachman, the story is well known; therefore I ask you again, upon your oath, if that prisoner at the bar be one of the three persons that you carried to the Blue Boar's-head on the backside of St. Clements, that night Dr. Clenche was murdered?

Gamble. Indeed, my lord, I cannot be positive whether he be one of them or no: I took up in Cheapside three men into my coach, and set one of them down at Gray's-inn, and drove the other two to Dr. Clenche's house, that night he was murdered, and he was not at home; and afterwards the man I had set down came in again, and I set them all down at the Blue Boar's-head alehouse near Clement's-inn Gate, about eight o'clock at night.

Cl. of Arr. Set up William Brown, servant at the Blue Boar's-head.

Just. Dolben. Hark you, is this one of the three men that the coachman set down at your master's house, that night Dr. Clenche was murdered?

Brown. Yes, my lord, it is.

Just. Dolben. What time did they come to your house?

Brown. They came about eight o'clock at night, and this man and the other staid till after eleven o'clock: only Milward went out and returned presently; and then immediately he went out again, which was before nine o'clock, and returned not until eleven o'clock after.

Just. Dolben. What time was Dr. Clenche killed?

Brown. About ten o'clock, or betwixt ten and eleven, as I think.

Just. Dolben. Who went out first, only Milward?

Brown. Only Mr. Milward, my lord: but this man staid all the time, till eleven o'clock at night; and another, who went by the name of Harper, as I am since informed.

Just. *Dolben*. Why then this man could not be in the coach when Dr. Clenche was murdered, so Harrison and Milward killed the doctor in all probability; for he says, this man at the bar, and another, staid at his master's house till after eleven o'clock.

Brown. My lord, when Milward came back, he brought a couple of men with him, in soldiers habit, about eleven o'clock at night.

Mrs. Milward. My husband told me, that Mr. Cole and he went out of the house, and left Mr. Harper behind.

Just. *Dolben*. But this man swears, that the prisoner did not go out of the house till eleven o'clock at night, and they were set down about eight o'clock, and Dr. Clenche was found killed a little after ten at night; and that Milward went out, and then came in again about eleven o'clock, and brought two men with him: it is to be feared he had been killing Dr. Clenche in that time; have you any more to say? if this man says true, nothing can be said more.

Mrs. Milward. Speak what was done when they came to drink the pot of ale, Mr. Brown.

Just. *Dolben*. I would fain know, mistress, who set you upon this business? is there not some money promised you? it was not the fear of your husband's ghost that put you upon it, I am afraid.

Mrs. Milward. I am much wronged, my lord, I know nothing of any money offered me.

Just. *Dolben*. What say you more?

Brown. My lord, Mr. Milward being at my master's house that night Dr. Clenche was killed, desired me to make a fire in the same room the next morning, and that he would come again then; and I made a fire accordingly, but he came not then, nor afterwards at any time to my knowledge; but on a Sunday night about a fortnight after, came the two persons that came with Mr. Milward in the coach to my master's house that night Dr. Clenche was murdered, and my master being above stairs, I sent him word, that the two men were there who were there that night the Doctor was murdered, and they inquired for Mr. Milward, saying he promised to meet them there, and he not being there, before my master could come down, they paid for the pot of drink, and went away.

Just. *Dolben*. When they came together to the Blue Boar's-head, they had some evil design, no doubt, but if it be true that those two men staid from eight o'clock till eleven, then it could not be this man that murdered Dr. Clenche; but hark ye, fellow, you say, there were three persons, whereof Cole was one, and Milward the other, who was the third?

Brown. I do not know his name, my lord, otherwise than as I have since heard.

Mrs. Milward. The other man's name was Harper.

Just. *Dolben*. You know nothing but what your husband told you, and it is most probable that Harrison and he did the murder, for that it appears that the prisoner at the bar is not the

man that killed the Doctor, that's plain. Have you any more?

Mrs. Milward. About a fortnight after the murder was done, they came to inquire for my husband at the Blue Boar's Head, and whilst the tapster went to tell his master, they left their money for the drink and went away, and would not be seen.

Just. *Dolben*. What if they had run away, what then? If they were at the Blue Boar when Dr. Clenche was killed, they could not kill him.

Mrs. Milward. His master says, that they were in the house, and out of the house, very often. Call Mr. Dalley the master. [Who appeared and stood up.]

Dalley. My lord, two of them were not out of the house all the night, I am not positive that this is the man that came in with Milward, but those two men that came in with him, never went out at all until after eleven o'clock at night, but only Milward went out between eight and nine, and returned about eleven o'clock.

Just. *Dolben*. What do you say to this, woman? your husband told you that the prisoner was one of the two; this witness cannot say he was one, but says positively those two men never went out till eleven o'clock, and from St. Clement Danes to Leadenhall-street is not to go in and out, they must take a great deal of time to go thither and back again. Hark you, Mr. Dalley, you say that those two men that Milward left, never went out of your house till after eleven o'clock; you are sure on't?

Dalley. No, my lord, they did not go out.

Mr. *Wise*. Mrs. Milward hath two witnesses that can tell somewhat more of the matter concerning her husband's being concerned in the murder.

Mrs. Milward. My husband told me, that the coachman took them up not far from Chancery-lane end, and that Mr. Cole laid hands upon the doctor in the middle of Holborn.

Cl. of Ar. Cryer, call John Sikes the coachman. [Who stood up.]

Sikes. My lord, I took up two men in Fleet-street, about Fetter-lane end.

Just. *Dolben*. What manner of men were they? What cloaths had they on?

Sikes. My lord, one of them had a light-coloured perriwig on, and the other was in sad-coloured cloaths, and lank hair, but I cannot be positive that this is one of them. They asked me if I knew Dr. Clenche of Brownlow-street? I told them, that I did not know the doctor, but I knew the street; and they bid me drive thither; and when I came to the street's end, they sent me to the doctor's house, and bid me tell him, that two gentlemen were at the street's end in a coach, who desired him to go with them to one that was not well; so the doctor came presently after me, and when he was in the coach, they bid me drive to Leadenhall-street; and when I came about Holborn-bars they bid me drive faster; and when I came

to Leadenhall-market, they bid me drive to Aldgate, and I drove through the gate to the Pye tavern, and when I had turned my coach, they bid me ask for one Hunt a chyrurgeon, but he was not there; and then I told them the gate was shut, and one of them put his hand out of the coach, and gave the watchman sixpence to open the gate, and then I drove back again to Leadenhall-market, and there they bid me stop again, and one of them gave me half-a-crown to buy a fowl; and I went a little way from the coach, and one of them called me back again, and gave me a shilling more, and bid me bring a couple; and he bid me ask for one Hunt a poulterer; I went all over the market, but I could find no such man, so at length I bought the fowls of another man, and would have had the man gone with me to my coach, but he would not; then I came to my coach-side, and found the door open; and I found the doctor sitting at the bottom of the coach, with his head against the cushion, and the two men gone, and one of them seemed to be in drink when I took them up, and I thought him to be that man fallen asleep, and that the doctor and the sober man were gone to the person that was not well; so then I called the watch, and found the doctor dead, and then it was about half an hour after ten o'clock at night.

Just. Dolben. Then I ask you, was that one of the men?

Sikes. I cannot say it, my lord; I don't know him.

Just. Dolben. What time of night was it that you took them up at Fetter-lane end?

Sikes. It was about nine o'clock, somewhat after.

Just. Dolben. Why then, they say, that this man never stirred out of the house from 8 o'clock till eleven; this man can't be concerned.

Cl. of Arr. Set up John Dudley. (Which was done.)

Mrs. Milward. Mr. Dudley, what did my husband say concerning the doctor to you in the country?

Dudley. He came into the country presently after the death of the doctor, and he sent for me, and was very much concerned; I asked him what was the matter with him, and he told me, that he was come out of town about the murder of Dr. Clenche; I told him, that I hoped he was not concerned in it; he told me, No, but there was a warrant out against him upon account that he quarrelled with the coachman that night that he carried him to Dr. Clenche's; and he said, that Mr. Harrison had sent to him from Newgate, and told him, that he would give him 20*l.* if he could make his trial easy.

Just. Dolben. Mistress, this makes it out, that he told you one story, and to this witness another, which contradicts your story fully; he told him, that he came away for fear, and that he was innocent of the murder; and since that he told you, that he was guilty. Well, what else did he say to you, Mr. Dudley?

Dudley. He was much concerned to enquire

after the Gazettes, and letters, if he were in them, about the doctor's murder, and to enquire if Mr. Cole and Mr. Harper were taken up about it.

Just. Dolben. You hear what is said against you; what do you say to it, Mr. Cole?

Cole. My lord, I know nothing of it.

Just. Dolben. No! I doubt you do; you were one of the three that was set down on the backside of St. Clement's church, at the Blue-boar's-head, where all things were consulted.

Cole. My lord, there was not one word spoke about killing of Dr. Clenche in my company.

Just. Dolben. Were not you acquainted with Milward?—Cole. Yes, my lord.

Just. Dolben. Were you not with Harrison?

Cole. No, my lord, I never saw him with my eyes.

Just. Dolben. Well, have you any more to say?

Mrs. Milw. Call Mr. Hobbs. [Who stood up.]

Hobbs. I met Mr. Milward in York-buildings, and he asked me how I did; and he went from me a little way, and then came to me again, and asked me if I would drink: so we went to the George in York-buildings, and there we drank a pot or two; and he asked me, if I heard that he was accused about the murder of Dr. Clenche; I told him, no; but he never told me any thing of this man at the bar.—Just. Dolben. What was Milward?

Hobbs. I do not know how he got his living.

Just. Dolben. Have you any body else, mistress?

Mrs. Milw. No, my lord, I know no more.

Just. Dolben. Gentlemen of the jury: Cole, the prisoner at the bar, stands indicted for murdering Dr. Clenche; who, as it now appears, was murdered in a coach by two persons that were therein together with the doctor. The question now before you is, whether Cole was one of these two?

Gamble the coachman swears, That the night Dr. Clenche was killed, he took up three men in Cheapside, set one of them down at Gray's-inn, and drove on to Dr. Clenche's house; the doctor was not at home; then the third man came in again to the coach, and he drove to the Blue-bear's-head, an alehouse by Clement's-inn, and set those three men down there, and 'twas then about eight of the clock.

Sikes the coachman swears, He took up two men at Fetter-lane end in Fleet-street, and by their direction drove to Brownlow-street, where the doctor lived, whom they got into the coach, and he drove as far as Aldgate, and through the gate, and then came back to Leadenhall; was sent by the two men in the coach to buy a fowl; when he returned they were gone, but the doctor found dead in the coach; and 'twas now half an hour past ten.

The question now, as I said before, is, whether Cole, the prisoner at the bar, was one of these two men?

The woman tells you, Milward her husband told her, that he and Cole were in the coach with Dr. Clenche, and that they two killed Dr. Clenche.

She likewise tells you, her husband told her, that Cole and her husband went out from the Blue-boar's-head near Clement's-inn, and left only Harper behind.

The court hath already declared to you, that her evidence, being only what her husband told her, is no evidence in law to take away a man's life, especially when it is single, without any circumstance to confirm it, as here 'tis. But that is not all; there is a very great evidence that what she says her husband told her, is false.

He told her, she says, that he and Cole went from the Blue-boar's-head and killed the doctor, leaving only Harper behind.

The master of the house, and his servant (witnesses which she produceth) both swear, that her husband went out alone, and left two

men behind, who both staid in the house till Milward returned, which was about eleven of the clock. The master, 'tis true, cannot say that Cole is one of the two, but the servant is very positive he is; and both are positive that two men that Milward left behind, continued in the house till Milward returned at eleven of the clock. These two men's depositions do plainly contradict her story; and if they swear true, Cole the prisoner was not one of the persons that killed the doctor.

You have all heard, I am sure, that one Harrison hath been convicted by a jury in this place for the murder of Dr. Clenche: if he was one of the two, then Milward, by his own confession (if his wife swear true), was the other: but this you cannot take notice of; the record is not produced, neither hath the prisoner taken notice of it. The question is only, Whether Cole be guilty of the murder? which I leave to you upon the evidence you have heard.

The Jury having considered the verdict, returned, that the prisoner was Not Guilty.

369. Proceedings before the House of Lords, between the Duke and Duchess of NORFOLK, upon the Duke's Bill, intituled, "An Act to dissolve the Marriage," &c. 3 WILLIAM & MARY, A. D. 1692.*

January 7, 1692.

THE said Bill was lodged in the House of Lords.

Jan. 8. The duchess of Norfolk having received intimation, that the duke of Norfolk

* Bishop Burnett, in treating of the transactions of the year 1694, says:

"The Tories began in this session, to obstruct the king's measures more openly than before; the earls of Rochester and Nottingham did it in the House of Lords, with a peculiar edge and violence: they saw how great a reputation, the fair administration of justice by the judges, and more particularly that equity, which appeared in the whole proceedings of the court of chancery, gave the government; therefore they took all occasions, that gave them any handle to reflect on these. We had many sad declamations, setting forth the misery the nation was under, in so tragical a strain, that those who thought it was quite otherwise with us, and that under all our taxes and losses, there was a visible encrease of the wealth of the nation, could not hear all this without some indignation.

"The Bishops had their share of ill humour vented against them: it was visible to the whole nation, that there was another face of strictness, of humility and charity among them, than had been ordinarily observed be-

was this day offering a Bill to the House of Lords, for dissolving the Marriage between them, and that the same was under debate before their lordships; she was advised to present the following Petition:

fore: they visited their dioceses more; they confirmed and preached oftener, than any who had in our memory gone before them; they took more care in examining those whom they ordained, and in looking into the behaviour of their clergy, than had been formerly practised; but they were faithful to the government, and zealous for it; they were gentle to the dissenters, and did not rail at them, nor seem uneasy at the toleration. This was thought such a heinous matter, that all their other diligence was despised; and they were represented as men, who designed to undermine the church, and to betray it.

"Of this, I will give one instance: the matter was of great importance; and it occasioned great and long debates in this, and in the former session of parliament: it related to the duke of Norfolk, who had proved his wife guilty of adultery, and did move for an act of parliament, dissolving his marriage, and allowing him to marry again: in the later ages of popery, when marriage was reckoned among the Sacraments, an opinion grew to be received, that adultery did not break the bond, and that

To the right hon. the Lords Spiritual and Temporal in Parliament assembled: the humble Petition of MARY Duchess of NORFOLK,

Sheweth, That your petitioner being informed, that the duke of Norfolk is at this time offering a bill to your lordships, for dissolving the marriage between him and your petitioner, Your petitioner humbly prays she may be heard by your lordships, before such bill be received. And your petitioner will ever pray, &c. M. NORFOLK.

Upon which Petition, their lordships were pleased to make the following Order, viz.

Die Veneris 8 Januarii, 1692.

A Bill having been offered to this house, on the behalf of the duke of Norfolk, to dissolve the marriage between the said duke and his duchess; it was ordered by the Lords spiritual and temporal in parliament assembled, that her grace shall have notice thereof, and may be heard by her counsel, at the bar of this house, on Tuesday next at twelve of the clock, what she hath to object against the receiving the said Bill: at which time the said duke may also be heard by his counsel, for the said Bill,

it could only entitle to a separation, but not such a dissolution of the marriage, as gave the party, that was injured, a right to marry again: this became the rule of the spiritual courts; though there was no definition made about it, before the council of Trent. At the time of the Reformation, a suit of this nature was prosecuted by the marquis of Northampton: the marriage was dissolved, and he married a second time; but he found it necessary to move for an act of parliament, to confirm this subsequent marriage: in the reformation of the ecclesiastical laws, that was prepared by Cranmer and others, in king Edward's time, a rule was laid down, allowing of a second marriage, upon a divorce for adultery. This matter had lain asleep above an hundred years, till the present duke of Rutland, then lord Roos, moved for the like liberty. At that time a sceptical and libertine spirit prevailed, so that some began to treat marriage, only as a civil contract, in which the parliament was at full liberty, to make what laws they pleased; and most of king Charles's courtiers applauded this, hoping by this doctrine, that the king might be divorced from the queen. The greater part of the bishops, apprehending the consequence that lord Roos's act might have, opposed every step that was made in it; though many of them were persuaded, that in the case of adultery, when it was fully proved, a second marriage might be allowed. In the duke of Norfolk's case, as the lady was a papist, and a busy Jacobite, so a great party appeared for her. All that favoured the Jacobites, and those who were thought engaged in lewd practices, espoused her concern with a zeal that did themselves little honour. Their number

if he shall think fit. Matth. Johnson, Cler' Parliamentor.'

Jan. 12. After hearing counsel this day, at the bar, what they could object for her grace the duchess of Norfolk, against the receiving of a Bill offered by his grace the duke of Norfolk, to dissolve the marriage between him and his duchess; as also the counsel of his grace the duke of Norfolk for receiving the said Bill. And after consideration of what was offered by counsel, on either side, and a long debate thereupon: this Question was put, Whether the duke of Norfolk's Bill should be received? It was resolved in the affirmative. Which Bill is as followeth:

An ACT to dissolve the Marriage of HENRY Duke of NORFOLK, Earl Marshal of England, with the Lady Mary Mordant, and to enable the said Duke to marry again.

"Forasmuch as Henry duke of Norfolk, and earl marshal of England, having been married to the lady Mary Mordant, hath made full proof that his said wife is guilty of, and hath committed, adultery on her part: and forasmuch as the said Henry duke of Norfolk hath no issue, nor can have any probable ex-

was such, that no progress could be made in the bill, though the proofs were but too full, and too plain. But the main question was, whether, supposing the matter fully proved, the duke of Norfolk should be allowed a second marriage: the bishops were desired to deliver their opinions, with their reasons: all those, who had been made during the present reign, were of opinion, that a second marriage in that case was lawful, and conformable, both to the words of the Gospel, and to the doctrine of the Primitive church; and that the contrary opinion was started in the late and dark ages: but all the bishops, that had been made by the two former kings, were of another opinion; though some of them could not well tell why they were so. Here was a colour for men, who looked at things superficially, to observe that there was a difference of opinion, between the last made bishops, and those of an elder standing: from which they inferred, that we were departing from the received doctrine of our church; and upon that topic, the earl of Rochester charged us very vehemently. The Bill was let fall at this time; nor was the dispute kept up, for no books were writ on the subject of either side."

Concerning the marriages of persons divorced for adultery, see the speech of Horsley, bishop of St. Asaph, in the House of Lords, A. D. 1800; and the other speeches in that debate. See, also, Paley's Principles of Moral and Political Philosophy, book 3, part 3, c. 4, 7, 8. It appears (See vol. 11, pp. 1144, 1145), that the Duchess proceeded against her husband before the Ecclesiastical Commissioners, and that they ordered her 1,500*l.* per annua for her maintenance.

pectation of posterity to succeed him in his honours, dignities, and estate, unless the said marriage be declared void by authority of parliament, and the said duke be enabled to marry any other woman: The king and queen's most excellent majesties, upon the humble Petition of the said Henry duke of Norfolk, having taken the premises into their royal consideration, for divers weighty reasons, are pleased that it be enacted, and be it enacted, by the king and queen's most excellent majesties, and by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present parliament assembled, and by the authority of the same, That the said marriage between the said Henry duke of Norfolk, and the said lady Mary his wife, shall from henceforth be null and void; and is by authority of this present parliament declared, adjudged, and enacted to be null and void, to all intents, constructions, and purposes whatsoever. And that it shall and may be lawful to, and for the said Henry duke of Norfolk, at any time or times hereafter, to contract matrimony, and to marry (as well in the life-time of the said lady Mary, as if she were naturally dead) with any other woman or women, with whom he might lawfully marry, in case the said lady Mary was not living: and that such matrimony, when had and celebrated, shall be a good, just and lawful marriage, and so shall be adjudged, deemed and taken, to all intents, constructions and purposes. And that all and every children and child born in such matrimony shall be deemed, adjudged and taken to be born in lawful wedlock, and to be legitimate and inheritable, and shall inherit the said dukedom of Norfolk, office of earl Marshal of England, and all other earldoms, dignities, baronies, honours, and titles of honour, lands, tenements, and other hereditaments, from and by their fathers, mothers, and other ancestors, in like manner and form, as any other child or children, born in lawful matrimony, shall or may inherit, or be inheritable, according to the course of inheritances used in this realm, and to have and enjoy all privileges, preeminences, benefits, advantages, claims and demands, as any other child or children born in lawful wedlock may have or claim by the laws or customs of this kingdom. And be it further enacted, that the said Henry duke of Norfolk shall be entituled to be tenant, by courtesy, of the lands and inheritance of such wife, whom he shall hereafter marry: and such wife as he shall so marry shall be intitled to a dower of the lands and tenements of the said Henry duke of Norfolk, and of such estate whereof she shall be dowable, as any other husband, or wife may, or might claim, have, or enjoy: and the child or children, born in such marriage, shall and may derive and make title, by descent, or otherwise, to, and from any their ancestors, as any other child or children may do, any law, statute, restraint, prohibition, ordinance, canon, constitution, prescription or custom, had, made,

exercised, or used to the contrary of the premises, or any of them, in any wise notwithstanding. And be it further enacted, by the authority aforesaid, that the said lady Mary shall be, and is hereby barred and excluded of, and from all dowers and thirds, and of and from all right and title of dower and thirds, unto, or out of any the honours, manors, lands, or hereditaments of the said duke; and that all conveyances, jointures, settlements, limitations and creations of uses and trusts, of, into, or out of, any honours, manors, lands or hereditaments, at any time heretofore made by the said duke, or any of his ancestors, or trustees, unto or upon, or for the use or benefit of the said lady Mary, or any the issue of her body, or for raising, discharging, or counter-securing any the manors, lands, or hereditaments of the said lady Mary, or any of her ancestors, shall be from henceforth utterly void, and of none effect: and all and every the said honours, manors, lands or hereditaments of the said duke, or any of his ancestors or trustees, shall from henceforth remain and be to, and for, the use and benefit of the said duke, and such other person or persons, and for such estates and interests, and in such manner and form, as if the said lady Mary was now naturally dead, without any issue of her body. And also, that all limitations and creations, of any use, estate, power or trust, made by any of the ancestors of the said lady Mary, unto or for the use or benefit of the said duke, his heirs or assigns, out of any the manors, lands, or hereditaments, of any of the ancestors of the said lady Mary, shall be from henceforth void, and of none effect.

REASONS offered to the Lords in Parliament, for receiving the before-mentioned Bill of Divorce, on the behalf of his grace the Duke of NORFOLK.

The not having a Sentence for separation from the ecclesiastical court, is thought to be no objection against the receiving or passing the duke of Norfolk's bill, for these reasons, viz.

1. The House proceeds, in this case, in their legislative and in their judicial capacity; and in their legislative, all things must proceed originally by bill.

2. That a sentence in the ecclesiastical court can give the duke no relief, as to what he seeks by his bill, viz. To dissolve his marriage, and enable him to marry again; but that relief must spring originally from the parliament, without relation to the ecclesiastical court.

3. That in case there was such a sentence, yet it would afford no assistance in this case: For the parliament, in cases of this nature, do not rely upon any such sentence for a satisfactory proof of the fact; but hear witnesses *viva voce*, and thereupon proceed.

4. That there are witnesses now living to prove the fact, which may be examined *viva voce*, whereas, if they die during the tedious proceeding in any inferior court, then there can

be no other proof but depositions taken in writing.

5. That Mrs. Wharton's case was received originally in parliament.

January 13. The duke of Norfolk's Bill aforesaid having been yesterday received and read, the duchess of Norfolk presented the following Petition to their lordships this day :

To the right hon. the Lords Spiritual and Temporal in Parliament assembled : The humble Petition of MARY Duchess of NORFOLK,

Sheweth,

That your petitioner being married to the duke of Norfolk fourteen years and upwards, never had or received from her husband any intimation of a misdemeanor, on her part, against him ; which, joined to her innocency of the crime mentioned in the Bill, makes this proceeding before your lordships very surprising to her : Her person, estate, and honour, which is more dear to her than her life, being now brought in question :

Your petitioner humbly prays she may have a copy of the particular charge against her, with the names of the witnesses, and reasonable time allowed her, to answer the same, before any farther proceedings upon the Bill.

MARY NORFOLK.

Upon which Petition the following Order was made.

Die Mercurii 13 Januarii, 1692.

Upon reading the petition of Mary Duchess of Norfolk, It is ordered by the Lords spiritual and temporal in parliament assembled, that sir Richard Reynes, sir Charles Hedges, and Dr. Oxenden, do attend this House to-morrow at ten of the clock in the forenoon.

MATTH. JOHNSON, Cler. Parl.

Jan. 14. After having heard the civil lawyers, the following order was made :

Die Jovis 14 Januarii, 1692.

After hearing this day the civil lawyers, pursuant to the order yesterday, upon reading the duchess of Norfolk's petition, It is ordered by the Lords spiritual and temporal in parliament assembled, that his grace the duke of Norfolk shall bring in the charge against his duchess, and particularly to the person, time and place, by Saturday next, at twelve of the clock. MATTH. JOHNSON, Cler' Parliamentor.

Jan. 16. The duke of Norfolk brought in the following charge against his Duchess :

The CHARGE which HENRY Duke of NORFOLK, Earl Marshal of England, doth exhibit against his wife, MARY Duchess of NORFOLK, before the Lords Spiritual and Temporal in Parliament assembled, pursuant to their Lordships Order of the 14th of January, 1692, is for the crime of Adultery.

The person charged to commit the said crime with the said duchess, is John Germaine, of

the parish of St. Margaret's, in the liberty of Westminster.

The times when the said crime was committed, were between the months of June and December, 1685, and several times since.

The places where the said crime was committed, are at Whitehall, Windsor, and within the parishes of St. Margaret's Westminster, St. Martin's in the Fields, St. James's, St. Ann's within the liberty of Westminster : And in the parish of Lambeth, in the county of Surrey. NORFOLK, and Marshal.

Upon which the following Order was made :

Die Sabbati, 16 Januarii, 1692.

Upon reading, this day, the charge, which Henry duke of Norfolk, earl marshal of England, hath exhibited against his wife, Mary duchess of Norfolk, for the crime of adultery : It is ordered by the Lords spiritual and temporal in parliament assembled, That her grace the duchess of Norfolk do attend this House on Monday next, or some person on her behalf, then to receive a copy of the charge against her.

MATTH. JOHNSON, Cl. Parl.

19 Januarii, 1692.

The ANSWER of MARY Duchess of NORFOLK, to the Charge exhibited against her by the Duke of NORFOLK, before the Lords Spiritual and Temporal in Parliament assembled.

This respondent is advised, that the charge exhibited by the duke of Norfolk into this honourable house against her, as to time and place, is too general, and is not pursuant, nor doth answer the end of your lordships order of the 14th instant, made upon the humble petition of this respondent. Wherefore she doth humbly hope, and pray, your lordships will not oblige her to make any further answer, till the duke shall bring in a particular and certain charge, as to time and place, against her.

And this respondent doth the rather humbly insist, That your lordships would please to require the duke to be particular, and certain in these material circumstances of his charge against her ; for that it appears, by his own shewing therein, that the supposed crimes objected to her, and alledged to be committed, were above six years before the bill was offered to this honourable house : During most of which time, at the advice, and by the approbation of the duke, she was, and continued beyond the seas, to ease him in his charge and part ; he frequently declaring, that when he should be more easy in his fortune, they should live together.

M. NORFOLK.

Upon which answer the following order was made. And the duke's second charge delivered in the same day.

Die Martis, 19 Januarii, 1692.

It is ordered by the Lords spiritual and temporal in parliament assembled, that her grace

the duchess of Norfolk shall have a copy of the duke's charge delivered this day against her; and that she, or sir Thomas Pinfold, do attend this house to morrow at 11 of the clock in the forenoon, to answer the said charge.

MATTHEW JOHNSON, Cl. Parl.

Which Copy is as followeth:

The CHARGE which HENRY Duke of NORFOLK, Earl Marshal of England, doth exhibit against his wife, MARY Duchess of NORFOLK, before the Lords Spiritual and Temporal in Parliament assembled, pursuant to their Lordships Order of the 14th of January, 1692, is for the crime of Adultery.

The person charged to commit the said crime with the said duchess, is one John Germaine, of the parish of St. Margaret's, Westminster.

The times and places when the said crime was committed, were at Whitehall, in the months of June, July, August, some, or one of them, in the year 1685. At Windsor, in the months of July, August, or September, some, or one of them, in the said year 1685. In the parish of St. Margaret's, Westminster, March, April, May, June, some, or one of them, in the year of our Lord, 1690. And in the said parish of St. Margaret's, Westminster, in the months of July or August, 1690. In the parish of Lambeth, in the county of Surrey, in the months of May, June, July, August, some, or one of them, in the year 1691.

NORFOLK, and Marshal.

Served by Thomas Bowen, Jan. 19,
before six o'clock.

Upon which, the next day, the duchess of Norfolk presented the following Petition:

To the Right Honourable the Lords Spiritual and Temporal in Parliament assembled,

The humble PETITION of MARY Duchess of NORFOLK.

That your Petitioner was served with an order of this honourable house, late last night, to attend your lordships this day, by eleven of the clock, either in person, or by sir Thomas Pinfold, to answer to a new charge brought in against her, by her husband the duke of Norfolk.

Your Petitioner is advised, That, for her just defence, it is necessary to alledge in her answer several special matters relating both to the duke and herself.

That in this short time appointed by your lordships, your Petitioner finds it impossible to instruct counsel to prepare such an answer as she is advised is necessary to put in.

Wherefore your Petitioner humbly prays your lordships, she may have convenient time to put in her answer to the said charge. And your Petitioner will ever pray, &c.

M. NORFOLK.

Upon which the following Order was made:

Die Mercurii, 20 Januarii, 1691.

Upon reading the Petition of Mary duchess of Norfolk, praying that she may have convenient time for answering to the charge put in against her, by his grace the duke of Norfolk, yesterday: it is ordered by the lords spiritual and temporal in parliament assembled, that her grace the duchess of Norfolk shall peremptorily answer, by herself, or proctor, to the said charge, to morrow at eleven o'clock in the forenoon.

MATTH. JOHNSON, Cler' Parliamentor'.

Accordingly, January the 21st, the duchess of Norfolk delivered in the following Answer:

I Mary duchess of Norfolk, under protestation, That the pretended charge of adultery given against me, in the honourable House of Peers, was, and is general, insufficient, and such as, I humbly conceive, I am not bound by law to give answer unto. Yet knowing my own innocency, and that I am not guilty of the pretended crime, this protestation being sacred to me, I shall, and do, under the matters and qualifications hereafter mentioned, answer, and say, hereby affirming, that having been married to his grace the duke of Norfolk for near 15 years, he never did (till this pretended charge given against me) in the least pretend, or intimate unto me, that I had ever injured his bed; but did always treat me with great kindness and respect. And about the year 1685, at his request and desire, I did go with him from London to France, and there continued with him for some time; where his grace, being under an indisposition, and continuing so for some time, he shewed such affection to me, and put so great trust and confidence in me, that all such things that were administered to him, in order to his recovery, he did not, nor would receive any of them but what came from my hands; and I did with great care attend him: and being recovered, he told me his occasions required him to go for England, but he would return to me in France within some short time, and bring me home to England; and at his parting with me, he shewed great affection to me, and in great passion of love, with tears in his eyes, said, He had ten thousand pardons to ask me, desiring my patience, and that I should return into England to him in some short time. And after his grace's return into England, he having notice from me that my lodgings was inconvenient, and desiring his leave to change the same, he wrote me word very affectionately, that God forbid he should constrain me to any inconveniency, and left me to my liberty therein. And before his parting with me, in France, as a testimony of his love and affection to me, he ordered 400*l* yearly to be paid unto me, out of his own estate, by quarterly payments, over and above the separate maintenance settled upon me by my father, upon my marriage with him. And that after his arrival in England, he made several visits to my mother,

the countess of Peterborough; and with great observance and respect, asked her blessings, and told her, he had left me well and safe in France; and said, that his own debts were pressing upon him; but if her daughter (meaning myself) would consent that the manor of Drayton, and other places, should be settled upon him and his heirs, he should thereby be made a happy man. And I coming into England, his grace having put off house-keeping, and dwelling in the countess of Peterborough's lodgings in St. James's for about two years; and I suing him for alimony (the said 400*l.* a year not being paid unto me), he did not, during that suit, object any crime against me, which had been proper for him to have done, to avoid alimony, if I had been guilty. And I, the said Mary duchess of Norfolk, being at Drayton in Northamptonshire, his grace did write very affectionately to me. And that disturbances happening in those parts, in November, 1688, I left Drayton; and, with the consent of the duke, went beyond seas, and there continued till sent for by my father and mother, and then returned, which was in or about October, 1691, with the duke's consent. And then applications being made to me by the duke my husband, to join with him in the sale of Castle-Rising, and other estates: But I being advised this must be injurious to me, could not join therein, which I humbly apprehend to be the true cause and occasion of this proceeding against my honour, on the duke my husband's part.

And I the said Mary duchess of Norfolk, adhering to my protestation of my innocency, and denying that I am guilty of the pretended crime charged against me, and being unwilling to impeach my husband of any crime whatsoever; yet being advised, That, by the laws of the land, a husband suing a divorce for the adultery of his wife, he ought not to obtain any sentence of divorce, if he be proved guilty of the same.

Wherefore this Respondent doth aver, and is ready to prove, that the duke her husband was, and is guilty of adultery, and hath continued in the course of adultery for these ten years last past, and doth so continue.

My Lords,

It is my misfortune to be thus accused. I had rather stand charged for high treason before your lordships, than with this ignominious crime. In the charge for high treason, the manner of trials, and the ways of proceedings are known; so is the punishment in this case against me.

Your lordships are now creating new ways of proceeding against me, and a new law to punish me; and this for a crime supposed and alledged to be committed seven years past, in another reign, after public indemnities in the sessions of parliaments, many sittings of parliaments, and dissolutions of others, without mentioning this crime against me. My counsel are to seek how to advise my defence in the proceeding, being altogether strange, and without precedent, or example.

I find my prosecution now to be very violent, and my proceeding to be very swift upon me, having had but one night to prepare my Answer to this general Charge. I do in this place publicly declare, I am innocent of what is objected to me, and am not guilty of defiling my husband's bed: I am not guilty of the crime charged against me. I hope (being thus accused) I may, without vanity and vain-glory, say, what is well known, that I am not only the duke of Norfolk's wife, but also born and descended from parents and ancestors of the ancient nobility: That your lordships ancestors, and my ancestors, who sat in this House, knew no such proceeding: It is with regret that I bring this answer for myself, and against my husband, but it being my defence, I hope you will excuse me.

And if your lordships shall, in your great wisdom, proceed farther in this matter, I hope, and do most heartily pray, that I may hereafter have convenient time to make my proofs, and full defence; and then I doubt not of your lordships justice to me, as well as for my husband, who sits and votes with your lordships.

M. NORFOLK.

Upon the delivering the said Answer, the next day the following Order was made:

Die Veneris, 22 Januarii, 1692.

It is ordered by the Lords spiritual and temporal in parliament assembled, That his grace the duke of Norfolk shall produce his Witnesses, to-morrow at ten o'clock in the forenoon, to be sworn. And that her grace the duchess of Norfolk do attend this House, by herself, or proctor, at the same time; and may have orders for witnesses, if she pleases.

MATTH. JOHNSON, Cler' Parl'.

Accordingly, January 23, the duke's Witnesses were produced; and whose names are as followeth: Margaret Ellwood, Ann Burton, Rowland Owen, Thomas Hudson, Simon Varelst, Peter Scriber, John Reynolds, Thomas Lloyd, John Hall, Mary Hall, Richard Owen, William Miles, Andrew Anderson, Thomas Foster, Margaret Foster, Jane Wadsworth, Mary Boyle, Rice Jones, Ann Jones, John Hoskins, William Baily, John Wood, Henry Dagley, John Colvin.

After these several Witnesses were produced, on behalf of the duke of Norfolk, and had given in their several places of abode, &c. the following Oath was administered to them:

"You shall true answer make to all such questions as shall be asked you by this honourable House, in relation to the charge of adultery, brought in by the duke of Norfolk, against the duchess of Norfolk, with John Germaine; you shall declare your whole knowledge of this matter, and shall speak the truth, the whole truth, and nothing but the truth, as well upon the matter you shall be examined on behalf of his grace the duke of Norfolk, as upon such interrogatories as shall be exhibited on behalf of the duchess of Norfolk, without favour or

affection to either party. So help you God, and by the contents of this book."

After the Oath administered, as aforesaid, the following Order was made:

It is ordered by the Lords spiritual and temporal in parliament assembled, That the duchess of Norfolk's proctor shall have a copy of what was taken upon swearing the duke of Norfolk's witnesses at the bar; and that the duke's witnesses shall give in their evidence at the bar, on Tuesday next, at ten o'clock in the forenoon; and that the duchess of Norfolk, by herself, proctor and counsel, shall attend, together with the duke's proctor and counsel, at the same time. MATTH. JOHNSON, Cler. Parl.

Jan. 26. After Examination of Witnesses, on behalf of the duke, the following Order was made:

After hearing this day, the witnesses on the behalf of his grace the duke of Norfolk; it is ordered by the lords spiritual and temporal in parliament assembled, that Friday next, at ten of the clock in the forenoon, shall be, and is hereby appointed, for her grace the duchess of Norfolk to make her defence by her proctor or counsel; and that his grace the duke of Norfolk's counsel and proctor be then present, and the witnesses who this day delivered their evidence, or oaths, on his grace's behalf: and that the duchess may have an order for such witnesses, as she shall think fit to make use of, on her grace's behalf.

MATTH. JOHNSON, Cler. Parl.

Upon which Order, the Duchess was advised to present the following Petition:

To the Right Honourable the Lords Spiritual and Temporal in Parliament assembled:
The humble Petition of MARY Duchess of NORFOLK,

Sheweth, that since the examination of witnesses before your lordships against your Petitioner, upon Tuesday last, the utmost endeavour and diligence hath been used, to prepare for her defence against the time appointed by your lordships.

That your petitioner is very much concerned, that, for the necessary defence of herself, she should be forced to lie under the charge sworn against her, one moment beyond the time given her by your lordships.

But, upon a consultation with her counsel and solicitor last night, she is advised, that it is absolutely necessary for her to address to your lordships for time, until Monday next, to bring in her defence, some of her most material witnesses being remote from London; and though she has sent for them, and used all means possible to get them ready by the time appointed, she cannot be able to have them here before Monday next.

Wherefore your petitioner humbly prays your lordships, (it being a case of the highest concern and utmost importance to your peti-

tioner) to give her time 'till Monday next, to bring in her defence. And your Petitioner shall ever pray,
M. NORFOLK.

Upon which Petition the following Order was made:

Die Veneris, Januarii 29, 1692.

Whereas this day was appointed for her grace the duchess of Norfolk to make her Defence; upon reading the Petition of her grace the duchess of Norfolk, praying, (it being a case of the highest concern, and utmost importance to her) to give her time, until Monday next, to bring in her defence; after hearing her counsel at the bar, and upon oath made that some of the duchess's material witnesses are out of town, it is ordered by the lords spiritual and temporal in parliament assembled, that her grace the duchess of Norfolk hath hereby time given her for making her defence, until Monday the 1st day of February next, at eleven of the clock in the forenoon.

MATTH. JOHNSON, Cl. Parl.

Feb. 1. The duchess of Norfolk began her Defence; and the following Order was made:

It is ordered by the lords spiritual and temporal in parliament assembled, That on Wednesday next, at eleven of the clock in the forenoon, the house shall proceed in hearing the duchess of Norfolk's evidence; and that all the witnesses that have been sworn on either side, do then attend the house.

MATTH. JOHNSON, Cl. Parl.

Feb. 3. Which they did, and the following Order was made:

After having this day heard several Witnesses on behalf of her grace the duchess of Norfolk, as also for his grace the duke of Norfolk, it is ordered by the lords spiritual and temporal in parliament assembled, that her grace the duchess of Norfolk's counsel shall proceed in the grace's defence on Saturday next at twelve of the clock.

MATTH. JOHNSON, Cl. Parl.

Feb. 6. They proceeded accordingly, and the following Order was made:

After having this day heard several witnesses on the behalf of the duchess of Norfolk, it is ordered by the lords spiritual and temporal in parliament assembled, that the counsel for his grace the duke of Norfolk shall proceed to examine witnesses, on Tuesday next at twelve of the clock.

MATTH. JOHNSON, Cl. Parl.

Feb. 9. Which accordingly they did, and the following Order was made:

After hearing some witnesses this day on the behalf of his grace the duke of Norfolk, it is ordered by the lords spiritual and temporal in parliament assembled, that the counsel for his grace the duke of Norfolk, as also the counsel for her grace the duchess of Norfolk, shall be heard on Thursday next at twelve of the clock, to sum up the evidence on either side; and that

Mrs. Sawbridge, and Mrs. Stourton, do then attend to be heard.

MATTH. JOHNSON, Cl. Parl.

Feb. 11. The Counsel attended accordingly, but not heard; and their lordships were pleased to make the following order:

It is ordered by the lords spiritual and temporal, in parliament assembled, that the counsel for his grace the duke of Norfolk, as also the counsel for her grace the duchess of Norfolk, shall be heard to-morrow at one of the clock in the afternoon, to sum up the evidence on either side; and that Mrs. Sawbridge, and Mrs. Stourton do then attend to be heard.

MATTH. JOHNSON, Cl. Parl.

Feb. 12. After Evidence summed up, this following Order was made:

After hearing this day the counsel, and a civilian, for his grace the duke of Norfolk; and also counsel, and a civil lawyer, for her grace the duchess of Norfolk, who summed up the evidence for their graces severally, It is ordered by the lords spiritual and temporal, in parliament assembled, That on Tuesday next, at twelve of the clock, this house shall proceed in the debate of this business; and that then no other business whatsoever shall intervene: and that all the lords in and about the town shall be summoned then to attend, and that the officers that summon them, give the house an account of what lords they summon.

MATTH. JOHNSON, Cl. Parl.

Feb. 16. The matter was accordingly entered upon; and, after some previous debates by their lordships, they were pleased to adjourn until the next day, when they proceeded. The Depositions taken at several times before, on the behalf of his grace the duke of Norfolk, as also those taken on the behalf of her grace the duchess of Norfolk, were read at the table, by the clerk, and are as followeth, viz.

THE PROCEEDINGS OF THE LORDS UPON THE EVIDENCE.

Rowland Owen examined on the behalf of the duke of Norfolk, against the duchess of Norfolk.

Rowland Owen saith, That Mr. Reyner, about six years since, being the duke of Norfolk's butler, ordered him to carry the things out; the lodgings being open, he saw Mr. Germaine in bed with the duchess of Norfolk, the duchess leaped out of the bed, and put on a morning gown, and Germaine hid himself in bed; this was between five and six o'clock in the evening, about a fortnight before Bartholomew day; he did not tell the duke: he is sure it was Germaine; he saw him often, twice or thrice a day; the outward door of the lodgings was shut, but he opened it with a key he had.

Rowland Owen examined a second time, saith he never had the key of the lodgings but once, that Mr. Reyner gave him the key, when

VOL. XII.

he went (as he told him) to the Blue Posts in the Hay-Market, to bespeak the duchess's supper; he saith he saw not Frances Knight then in the lodgings, nor any other woman but the duchess of Norfolk; he saith, he hath seen Reyner often open the outward door of the lodgings, when he hath been by, without calling Frances Knight: he saith, that he himself opened the first door with the key, the second door was not close shut, and the third door was open: he saith, two of the doors are straight forward, and the third turns a little on the right hand; he said he was gone in at the third door when the duchess leaped out of bed. (a)

(a) The following OBSERVATIONS were published with the above Proceedings, in 1692; by her Grace's Friends.

Observations upon the foregoing Evidence.

We are in the first place to consider, and compare the evidence on both sides. Secondly, To examine the credit of the witnesses. Thirdly, The reasonable probability of the matters sworn, according to the common course and practice of the world.

Owen swears, That being sent by Henry Reyner, the duke's butler, to carry the things out, and the lodgings being open, he saw Mr. Germaine and the duchess in bed; and to countenance the story, he says, That two of the doors are straight forward, giving to understand that the doors being open, and one against another, a body may see the bed out of the first room into the third; that Reyner gave him the key of the outward door, and upon the unlocking of it he made this discovery.

Frances Knight encounters this evidence with a deposition, that she kept the key of the outward door herself, and delivered it to nobody, but now and then to my lady Peterborough's house-keeper: that Owen never went into any of the inner rooms, and that the doors are sideways.

Henry Reyner saith also, That he himself could not get into the lodgings but by Frances Knight; that he never gave Owen the key, nor never had it in his possession; that he never saw Owen beyond the passage room, nay, that Frances Knight never gave him the key, but that he still went to her to open the door, and that he never had any key to the lodgings; that whenever he sent Owen with plates, spoons, and the like, from the duke's house to the lodgings in Whitehall, he was either there himself to receive them, or directed Owen to deliver them to Frances Knight.

Now, if these two witnesses speak truth, Owen was never in the inner rooms at all; he never had the key of the outward door, and the doors are not straight forward as Owen swears they are, which is a matter of fact easily cleared.

As to the credit of Rowland Owen, Edward Sylvester, John Jones, and Edward Cooke are

3 M

Witnesses produced to the credit of Rowland Owen.

Edward Sylvester saith, He hath known Rowland Owen three or four years, and he hath trusted him in business, and he hath ever been very faithful; he hath trusted him in stores to the king, and he might have embezzled, but ever found him honest; and he hath had three or four thousand pounds worth of goods that he might have embezzled, and hath had opportunities of doing ill things, but he never did: he hath trusted him with every thing he hath; he hath had more than 20*l.* embezzled by others, but he never embezzled a half-penny: he knows not well who recom-

produced in his favour. The first swears, he never knew him steal or cozen, as if the case were pilfery. The second, That Owen might have done him wrong, and did not, and thence infers that he would not take a false oath. The third, That he knows nothing to the contrary of his being an honest man. So that here are three surmises for the reputation of Owen, which are just nothing to the purpose, on the one hand; and two point-blank proofs, upon oath, against him on the other; and not one syllable all this while to disparage the testimony of either Knight or Reyner; though there are several pinching passages in the evidence, that, if they were false, might be detected by hundreds of witnesses. And for an instance of Reyner's tenderness of an oath, he has own'd some things, upon the close of his examination, to the seeming prejudice of the duchess herself. This is meant of their going by borrowed names; but as things stood at that time with many persons of honour, under her grace's circumstances, it was no scandal to conceal either their names or their abodes. But as to the true reason of the 'duchess's' retirement, and living in a manner so *incognito*: the earl of Peterborough falling desperately sick in the Tower, her grace came over upon it, from beyond the seas, to be within distance, in case the sickness should have proved mortal. The duchess had at that time nothing to live upon but an exhibition from her father, and one half of that was made over too for the payment of her debts; so that not being in a condition to appear answerable to her quality, she thought herself bound in honour, prudence, and justice to retrench her expences, which she could not better do, than by such a retreat.

It is in the next place to be observed, how Owen interferes with himself; the lodgings, he says, being open, he saw Mr. Germaine in bed with the duchess of Norfolk, the duchess leap'd out of bed, &c. This must naturally be understood to have been upon the opening of the first door; and to the end it should be taken so, he says that the two first doors were straight forward, and that the third turns a little. Now if so, how could he see the bed out of the first room into the third? And then he forgets himself again, in saying that the second door was

mended him to him; he hath an hundred men now, and he knows not that three of them were recommended: he hath trusted him with goods an hundred and an hundred times that he might have embezzled; and others that he hath so trusted have cozened him, and he hath lost 20*l.* in a month's time by them; he works at our work, and that better than twenty that he hath had, and he is no porter: he saith he knows not Mr. Negus, nor was not acquainted with him until yesterday.

John Jones saith, he hath known Rowland Owen above three years, and that he is a very honest man, and that he ever found him faithful; that he lodged in his house, and that he might have done him injuries if he would, and

not close shut, and the third open; so that he has now doubled the difficulty: there was no seeing into the bed-chamber, both because the second door was almost close, and because the third was sideways. It is to be noted also, that the bed stands quite out of sight of the bed-chamber door, which is sufficient of itself alone to overthrow Owen's testimony. But upon second thoughts, he takes himself tripping, and instead of mending the matter, makes it worse; it comes into his head by this time, that there was no seeing them in bed out of the first room, and so thinks to help it out with a flam at the wrong end of his information, that indeed he was in at the third door when the duchess leap'd out of her bed. Now, to take the tale his own way, can any body imagine, that Owen should unlock the outward door, lay down his lumber, pass these two rooms into the third, the duchess and Mr. Germaine both awake too, and all this noise not give them the alarm?

To come now to the probability of the thing, Reyner gave him the key, he says, only for once, it seems, for he never had it either before or since. Has not this the face now of a contrivance, calculated for a particular turn? Is it not highly improbable again, that a pitiful, drudging fellow, that earn'd his bread by doing porter's work for the family, should have the duchess's bed-chamber lain open to him? And so for the morning-gown, and Germaine hiding himself in the bed, had they no other cloaths or garments lying by them? That Owen should have luck to see just this, and nothing else. But his lesson was to swear *Nudus cum Nuda*, and *Solus cum Solâ*, to bring the proof up to the straitness of the law, and that was the part he had to play. Or, to take the case yet another way: if Owen had seen them out of the first room, can any body think he would have ventur'd after that into the bed-chamber? Or if he did not see them in the first room, what had he to do in the other room at all? But over and above all the rest, for an amour of this quality, to be carried on thus in the face of the sun, the doors and the curtains open; let any man ask his own conscience, if he does not look upon it as an imposture, without a precedent from the creation to this day.

he hath been employed elsewhere, and he never heard any ill of him; he believes he is a man of a better principle than to take a false oath.

Thomas Cooke saith, That he hath known *Rowland Owen* five years, and knows not but that he is an honest man, and saith that he maintains his family by his labour; he is his neighbour, and never heard him taxed with any misdemeanour.

Witnesses sworn on behalf of the Duchess, for invalidating the testimony of *Rowland Owen*, viz.

Frances Knight saith, She knows *Rowland Owen*, as he was a fellow-servant in the duke of Norfolk's house; she hath known him a year, he was running porter, to carry up coals and wood; he was not trusted with any keys; she was trusted with the keys to the lodgings, and she always kept the key to the outward door to the lodgings, and there was no other key; and that she never delivered it to any body, but sometimes left it with the lady *Peterborough's* house-keeper; she never let this *Owen* have that key, or any other key to the lodgings, it was below her to do it; he never went into the inner rooms, no farther than the steps to the outward room; he is a pitiful, beggarly fellow, he laid the steward's cloth, and had no other livelihood; she lived with my lady six years and upwards, and all the while had the key to the outward door: she saith, you must first come into the room called the footmen's waiting-room, then enter the dining-room, then enter the bed-chamber, the doors are side-ways: she made the duchess's bed constantly; she locked the door, and kept the key in her pocket; she had the key of the rooms until the countess of *Westmoreland* had the lodgings, which was not till the duke and duchess left them, which was ten or twelve days before *Bartholomew-tide*, six years ago.

Henry Reyner saith, That he knew *Rowland Owen*, street-porter; he saith, that he (this witness) could never get into the lodgings, but when he had the key from *Frances Knight*; he saith, *Owen* never came into the lodgings, but had a key to a house where the empty bottles were, which was without the lodgings; and he himself could not get into the lodgings but by *Frances Knight*; he never had the key in his own possession; he never saw *Owen* farther than the passage-room; he saith, that the doors are not opposite to one another: he saith, *Frances Knight* never gave him the key; he always found her there to open the doors, or in the room: he never had any key that would open the lodgings; *Owen* never told him that he caught the duchess in the manner as is said; he knows not of any livelihood he had, besides laying the steward's cloth: *Owen* had wages from the duke, and lodged at the duke's house in *St. James's*; he sent bottles, pewter plates, forks and spoons, bread, and linnen sometimes by him, from the duke's house to the lodgings in *Whitehall*: when he was not

there to receive them himself, he gave him directions to deliver them to *Frances Knight*, or gave him the key of the cupboard. Being asked whether he hath ever gone by another name than *Reyner*? He desired to be excused, and refused to answer; he refused also to answer, whether he had known any lady go by the name of *Bateman*: afterwards he said, he did know one to do so. He saith, she went by the name of the duchess of *Norfolk*: he saith, it was the duchess of *Norfolk* that went by the name of *Bateman*, and she went so he believes for a year; it was at *Lambeth*, but he knows not at whose house there; he never saw *Germaine* there; it was a year, or half a year since, he knows not certainly; the house is called by the name of *Scriber's* house, a dyer; he never saw *Mr. Germaine* at *Scriber's* with the lady *Bateman*; he saith, he himself went by the name of *Goodman*, when he lived with this lady *Bateman*; he saith, that he knows not that *Germaine* was ever at *Lambeth*, by that name, or any other: he saith, he never paid any rent for the house at *Lambeth*, nor knows that *Germaine* paid any for it; but he saith, he was a servant to the duchess at *Lambeth*, but knows not what office he was in, but she paid him his wages.

Henry Reyner, examined to what *Rowland Owen* said at his second examination, saith, he never gave him the key of the lodgings, and saith, he never had the key of the lodgings.

Margaret Ellwood examined on the behalf of the Duke of *Norfolk*, against the Duchess. (b)

Margaret Ellwood saith, she had a company to see the lodgings at *Windsor*, in the first

(b.) *Observations upon the foregoing Evidence.*

Here's a foul and a suspicious story in this deposition of *Margaret Ellwood*, wherein she stands singly upon the credit of her own testimony, without any colour or corroborating evidence to support it: only capt. *Charles Potts*, *John Faucet*, and *Lawrence Purcell*, are produced to speak to her personal reputation. The first says, she behaved herself well and prudently in the duke's house; the second and third, that they know no ill by her.

There were produced on the behalf of the duchess, and to invalidate the testimony of *Margaret Ellwood*, these six witnesses, *Michael Haddon*, *Joyce Heath*, *Mary Trevis*, *Mary Jones*, *Anne Ross* and *Mary Ross*. *Mary Trevis*, *Mary Jones*, and *Anne Ross*, do all depose, that about Christmas last, speaking of the duchess, and *Mr. Germaine*, *Margaret Ellwood* told each of these witnesses respectively, that she never saw or knew any thing of ill by the said duchess; and yet *Ellwood's* accusation bears date in the first year of king *James*. *Mary Trevis* swears farther, that upon the next Sunday after Christmas last, *Ellwood* told her, upon borrowing a scarf of her, that it might be five pounds in her way, for the duke was to be divorced from the

year of king James's reign, about three or four of the clock in the afternoon; a woman told her that my lady was not there, but she opening the door, saw my lady upon the stools in an ill posture, Mr. Germaine's breeches were down; he pulled them up, and laid his hand on his sword, saying, 'God damn you for a whore, how have you the impudence to come here?' My lady bid him kick me down; he scattered some concerns, that is, man's nature, on the boards; she saw no nakedness but her knee, or a little above. Another time after, she found Germaine's handkerchief and ruffles in my lady's bed; my lady's woman said there was Germaine's name upon them. Another time, she saw Mr. Cornwall let Mr. Germaine out of my lady's closet: she saw Germaine's

duchess, and he had sent his chariot for her, and she was to be a witness. Anne Ross speaks also to the same effect, how Ellwood told her there would be a divorce, and the duke had sent for her to be a witness; and likewise saith, that Ellwood's husband told her, that his wife was to have 30*l.* per annum settled upon her, and live at Windsor, and have the shewing of the castle.

Mary Ross speaks to the same purpose also, with the witness above, as to what Ellwood's husband said of Windsor, the settlement, and the divorce; adding also, that the duke was to have a great fortune (according to the common rumour then about the town); Mary Ross's father was by, and heard all this: it was about a week before the date of the information that discourse had passed.

Nay, the duchess was so clear in the matter, that she sent for Ellwood a little before Christmas last, and bid her speak the truth; as Ellwood herself owned to Mary Jones and Anne Ross.

To come now to the quality and credit of Margaret Ellwood. Haddon says, she was his tenant at an alehouse in Windsor, in 1659, carried off her goods by night, and went away in his debt.

Heath saith, she lived in a cellar, led an ill course of life; her husband was a cobbler in a stall.

Anne Ross says, that she had five children, and that she had but sixpence a day maintenance for herself and them.

This was her condition till near Christmas last, when all on a sudden, as Anne Ross deposes, she was taken into the duke's house, the children new cloathed, and tricked up with good frocks and top-knots, (which were till then all in rags,) lodgings provided for them at four shillings a week, and a maid to look to them, and no visible means of doing all this. But, in fine, the change was not wrought by miracle, and leans much toward the discourse before mentioned, that Anne and Mary Ross had with Ellwood's husband.

The question, at last, is briefly this: whether is to be believed a woman under so many scandalous circumstances, and one that swears

legs within her's when she came the first time into the room, and his breeches were about his heels. The first time was in Bartholomew-fair time; Mrs. Knifeton told her it was Germaine's linnen.

Witnesses produced to the credit of Margaret Ellwood.

Captain Charles Potts saith, he hath known Margaret Ellwood six or seven years, and that she was servant to the duke of Norfolk, and that she behaved herself well and prudently there; her husband was a soldier in his company, and was, as he hath heard, a shoemaker.

John Faucet saith, he knew Margaret Ellwood, while she was the duke of Norfolk's servant, about two or three years; he never

for herself too; or six witnesses against her of so unquestionable probity, that not so much as one of them could be impeached by the other party?

To pass now to the palpable unlikelihood of the story barely in itself; Ellwood was carrying company, she says, to see the lodgings at Windsor, and opening the door, she saw and heard as in her deposition. How came it, now, that none of this company should be produced, or so much as named to second Ellwood? For 'tis to be presumed, they must needs hear and see what passed upon this adventure, as much as she herself did; or if she had but named the woman, who, she says, told her my lady was not there, it might have served as a collateral inducement for the giving of some sort of credit to it. But in a matter of this importance, to have so many witnesses within reach of being found out, and none to appear, looks very ill on their part, that were so much concerned to produce them: and so for Germaine's threatening her, and the duchess's bidding him kick her down, no people in their right wits but would have tried to stop her mouth with fair words and a good bribe in such a case as this, rather than provoke her, by menaces and ill language, to run open mouth to the duke with the story, in revenge, when she had the duchess's honour and estate so absolutely at her mercy.

As to the business of Mr. Germaine's handkerchief and ruffles, and his being let out of the closet, the contrivance is all of the same piece with the rest; for why were not the persons named in her deposition produced to prove the particulars therein mentioned, as well as Ellwood? It is most certain, that the prosecutors could easily have done it, and that it was properly their business and interest so to do; for what signifies Ellwood's single testimony, under her circumstances, without corroborating proofs? She tells us a tale, of company to see the lodgings; a woman that told her so and so; and another woman and a gentleman that said and did this and that, and yet not one creature at last to second her deposition, nor any pretence of an exception to the evidence on the other side.

heard any scandal, or disgrace of the woman, but that she carried herself civilly; he knows not whether she kept an alehouse in Windsor.

Lawrence Purcell saith, he knows Margaret Ellwood, she lived in his house in Brooks-market, next Easter will be two years: he knows nothing amiss of her; she took care for her living; he never knew her keep ill hours; she took a room in his house, some of the rent is behind, he thinks thirty-two shillings, her husband and the woman gave him a bond for it.

Witnesses sworn on the behalf of the Duchess, for invalidating the Testimony of Margaret Ellwood.

Michael Haddon saith, he had been acquainted with Margaret Ellwood, four, five, six, or seven years: when he first knew her, her husband was a soldier in the duke's company, and she was, as he hath heard, an under housekeeper; he believes she was turned out of the duke's service; afterwards she sold drink in a house of his at Windsor, and went away in his debt by night, without paying him; she took her goods with her; this was in 1689.

Joyce Heath saith, she knows Margaret Ellwood; she lived in a cellar of her's, and in a back-house of her's, but not at the same time, three quarters of a year, in Brooks-market, about Michaelmas last; she paid the landlady but eleven shillings and sixpence: her course of life was not good; she was in an inferior condition, her husband was a cobbler in a stall, and she had five children.

Mary Trevis saith, she hath but a slender acquaintance with Margaret Ellwood; but the said Ellwood sent to borrow a scarf of her the Sunday after Christmas last; and saith, that going the next day for her scarf, she, the said Ellwood, desired it for a longer time, for it might be five pounds in her way, for she was to be a witness for the duke of Norfolk, who was to be divorced from his duchess, and that the duke sent his chariot for her: I told her there could be no separation in marriage, except adultery could be proved; and that I could not think it reasonable to believe, that so mean a servant as she could be a spectator to so ill an action as that was. She thought she could do the duke no kindness in going, for she never saw any other harm by the duchess, than that she saw gentlemen come to and fro to the house; but the duke had sent for her, and she must go.

Mary Jones saith, she knows Margaret Ellwood, who she heard say, the lady duchess sent for her a little before Christmas last, and said, Margaret, I desire you to speak the truth, I would not have you disoblige my lord in the least. Margaret Ellwood said, she never knew no harm by her grace. The duchess demanded the keys of her, and she gave them her; and the duchess gave them to her, the said Ellwood, again the next morning: The discourse was a few days before Christmas last.

Anne Ross saith, she knows Margaret Ell-

wood, who came to her house, and told her, about two months since, that the duke of Norfolk sent for her to witness, for there would be a divorce between the duke and duchess; and I asking her what she could say, she answered she could say little, but that she knew no ill by the duchess; but that she was a good, generous spirited lady, and she never knew any ill action by her in her life; I bid her have a care what she went about, for that would do the duke but little kindness. The duchess, she said, called for the keys of her lodgings, but gave her them back the next morning. She saith, that last week she went to her to demand a debt, and she promised to come and pay it her. She saith, she went to the porter at the duke's to ask for her; but the porter said she was not within; but meeting with her child there, she said she was within, and brought her, the witness, to her in the duke's house, and she made her very welcome, and sent her husband with her, the witness, to see her children's lodging in the Green Mews, near the duke's house: She saith, Ellwood's husband told her, upon asking how the cause went, that his wife was to have 30*l.* per annum settled on her, and to go to Windsor to live, and to have the shewing the castle: She saith, that upon her going to see the children, and commending their lodgings, that Ellwood's maid, or woman, told her they paid four shillings a week for the lodgings: She saith, the children were well cloathed, with good frocks and top-knots, and they used to be ragged, and that her husband used to allow her but sixpence a day for her and her children: She saith, that Margaret Ellwood told her she had been with the duchess, and that her grace bid her do nothing to disoblige her lord, but speak the truth.

Mary Ross saith, she knows Margaret Ellwood; she saith, she heard Ellwood's husband say, that the duke of Norfolk had taken care of his wife and children and settled 30*l.* per annum on them, and her habitation was to be at Windsor Castle; and said, that my lord duke would be divorced, for he was to have a great fortune of 20,000*l.* a year: This discourse was the last week, and her father was present, and her mother was just gone out.

Thomas Hudson examined on the behalf of the duke of Norfolk, against the Duchess. (c)

Thomas Hudson saith, That the duke of Norfolk being at Portsmouth, he was butler at

(c) *Observations upon Thomas Hudson's Evidence.*

Hudson swears himself the duke's butler at Windsor. William Purchase swears that Hudson was never the duke's butler.

Hudson says, that they went to play, and that he over-heard Mrs. Gwin out of a closet, saying as in the evidence. Mrs. Gwin is a dead witness, and Hudson but a closet witness, which is little better; now Purchase says again, that Hudson was never suffered to

Windsor, when Germaine, and the duchess, and Cornwall went to play; Germaine sent his footman for clean linnen, which he brought the next morning. Mrs. Gwin said to the duchess, the dog would have lain with me, but she would not lay the dog where the deer laid, for she knew my lady duchess would accept of him; after that, he saw a shirt and a waistcoat in the closet, which my lady's woman and Anne Burton took away. My lord being absent, we murmured amongst ourselves, that my lord was wronged: I told my lord; whereupon my master Cragg had me to my lord Peterborough's lodging, and threatened me, that he would prefer me to his brother Richards, who turned me off in Germany. This was, he thinks, in December, or September, 1685. Mrs. Gwin spoke this in the Green Room, and he was in a closet hard by, and the door open, and so heard it.

Witnesses sworn on the behalf of the Duchess, for invalidating the testimony of Thomas Hudson.

William Purchase saith, That he knows

come into the room where the duke or duchess were at play.

Hudson says likewise, that the servants murmured amongst themselves, that my lord was wronged, and that he told my lord of it. Colonel Jacob Richards deposes, that he himself telling Hudson of a talk, that he had betrayed the duchess, and speaking of a noise of the adultery; Hudson made answer, that it was a false accusation, and knew nothing of it.

Now, as to Hudson's credit, he was colonel Richards's footman, who turned him off as a tricking fellow, and not fit to be trusted. Mr. Negus, the duke's servant, both then and now, was of the same opinion too, and advised by letter the putting of him away, as a dangerous fellow.

The story of Mr. Germaine's sending his man for clean linnen over-night, and the bringing it next morning, has little in it, even supposing the fact to be true. First, The order was given bare-faced, and consequently no mystery in it. Secondly, There was a set-company at play, and that was not an opportunity for a love intrigue. Thirdly, It is no new thing for people to sit up all night at play, and change their linnen next morning, without any offence to honesty or good manners, where they may have a privacy so to do it. And if my lady's woman and Anne Burton took away the shirt and waiscoat, as he says they did, there is no great hurt in that neither; though it is much to have three such confidants to such a secret, an under footman privy to the intrigue of Germaine's man going and coming, and raking in the women's closet among the linnen.

But still the only proper witnesses are kept behind the curtain: Anne Burton indeed is produced, and we shall see what kind of evidence she proves herself in the next place.

Thomas Hudson, who, he says, was never butler to the duke of Norfolk, either at Windsor, or any other place: He, the witness, was under butler himself, Reyner was butler in 1685, and the witness was under butler. He saith, Hudson waited on the gentleman of the horse and the steward; he was not the duke's servant, nor waited at the table that he knows of; he was never suffered to come into the room when the duke or duchess was at play. He saith, he, the witness, was not at Windsor at the time when the duke of Norfolk was at Portsmouth, but he was sent to Drayton in Northamptonshire, and was then the duke's servant as under butler; he knows not that Reyner was; he saith, he is now servant to the lord Peterborough.

Col. *Jacob Richards* saith, That he knows Thomas Hudson, he was his servant, he was recommended to him by Mr. Cragg, he was his footman; he believes he was in his service four months, he parted with him, because he found him a tricking fellow; he told him his brother Cragg was to be killed by one Curry, and another Irishman: He, the witness, writ to his brother Cragg, and he advised the witness to part with him, for he did not think him fit to be trusted in his travels; whereupon he paid him his wages, and gave him money to bear his charges to England, and sent a trunk by him. One Mr. Negus travelled with the witness; and his father, who then, and now lives with the duke of Norfolk, writ to us, that he did not think it fit for us to keep such a servant, for he was a dangerous fellow, or to that effect. Hudson never owned any thing of the adultery to the witness, but positively declared to him he knew nothing of it: This was in January, 1685. He saith, that Cragg writ him word, that Hudson must needs be a tricking knave. He negligently told the witness this of the adultery; curiosity made him ask it of him, for he had lived with the duke and duchess, and it was natural for him, the witness, to ask such a question. He saith, he believes Hudson saw some of his letters: He saith, there were printed papers in the trunk he sent, but nothing of any considerable value: He saith, Hudson never cheated him of any thing that he knows of: he hath trusted him with 100*l.* at a time: The trunk was delivered in England, and he believes he knew what was in it. He saith, that asking Hudson whether he knew any thing of the adultery charged on the duchess of Norfolk? Hudson said, he knew nothing of it. He, the witness, told him, that it was said, that it was he that had betrayed the duchess; he said, it was a false accusation, for he knew nothing of it.

Anne Burton examined on the behalf of the Duke of Norfolk, against the Duchess. (d)

Anne Burton saith, She was servant to the

(d) *Observations upon Anne Burton's Evidence.*

Anne Burton has the story over again of

duke and duchess of Norfolk: when the duke was gone to Portsmouth, she was at Windsor, when my lady went to London with Germaine. When my lady came home, after supper she was in great haste to go to bed; when she was undrest, she said she would lock us out, because she would not be disturbed before eleven o'clock the next morning, though the king and queen should come. Hudson told her Germaine was still in the house, whereupon we laid chairs on the back stairs, that we might hear him if he came down; the chairs were not removed the next morning; when Germaine's man came with linen, he said his master was there. My lady ordered a fire to be made in my lord's room, where, when she was come, Mrs. Nelly Gwin came in, and asked her how she liked her night's rest? And being asked for Germaine, she said she knew nothing of him. My lady complaining of her hair being out of order, Nelly answered, It was a hot night with her, enough to put her hair out of powder and curl too. Quickly after, Cornwall came in, and asked for Germaine; and my lady saying, she knew nothing of him, Nelly

the shirt and waistcoat, and of Mrs. Gwin's discourse, to which enough is said already, and more needs not be said upon the evidence of a person so manifestly forsworn. In her first oath, she swears herself a single woman, and that she was never married; but upon witnesses appearing to prove the contrary, she was called to the bar again, and owned herself to be married, and that her husband's name was Benskin.

This Anne Burton had been a lodger sixteen weeks to Susan Wheatcroft, as appears by Wheatcroft's deposition; she conveyed her goods privately out of the house by parcels, and slipt away seven pounds fifteen shillings in her debt; she told Wheatcroft that she was to be a witness against the duchess, and that she should have money; her husband saying also, that his wife was to be a material witness against the duchess, and he himself should have a commission, and more than that too.

Mary Sheriff says, That pressing Anne Burton for three pounds that she owed her, her answer was, That she was to be a witness for the duke against the duchess, and that in a short time she should have money, and then she would pay her.

William Purchase swears, that about a year and half after the report concerning the duchess and Mr. Germaine, Anne Burton told him the duchess was wronged, and she hoped to see her accusers punished; and that he himself hath often spoke of this passage to several, and particularly to Mr. Welborne. Take notice, that these depositions for the duchess, as well as the former, have passed without any contradiction: that Germaine's man is neither produced nor named; the linnen (if any) brought as openly as it was sent for. No Mrs. Knifeton appears, and the whole deposition rests upon the credit of a forsworn woman.

Gwin said, I question not but he will come out by-and-bye like a drowned rat; with that, while I was cleaning the dining-room, Mrs. Knifeton called me, and shewed me in a closet Germaine's shirt and waistcoat, and afterwards making my lady's bed, saw there were two prints where two had laid. The shirt and waistcoat were sent by the duke to the lord Peterborough's: She saith she is a single woman, and was never married; this was about Bartholomew-tide, six years since: She supposeth the bed was stained both by a man and woman.

Witnesses sworn on the behalf of the Duchess, for invalidating the Testimony of Anne Burton.

Anne Burton against herself: Upon seeing several witnesses come in, to prove her to be a married woman, (though she had sworn the contrary), was called to the bar of the Lords, and there saith, She was not married when she was at Windsor; since that she hath been married. Anne Burton was her maiden name; her husband's name is Benskin.

Susan Wheatcroft saith, That she knows Anne Burton, and that she lodged in her house sixteen weeks, with her husband, Robert Benskin; and she said, she should have a parcel of money to be a witness for the duke of Norfolk, against his duchess; this was about March two years since. Her husband said, he should have a commission from the duke of Norfolk, and he should have a great deal more from him, for his wife is to be a material witness against his duchess. They did not pay her, the witness, when they went away, nor since; they owed her 7*l.* 15*s.*; she hath been seeking after them, and could not find them; she left a trunk with rags in it, and went away privately, carrying away her goods by parcels.

Mary Sheriff saith, That she lives next door to Warwick-house, in Holborn, and hath kept house there near seven years, and hath known Anne Burton two years; she lived with my lord Clare: While she was there a soldier courted her; they used to come every day for a fortnight or three weeks to her house to drink; she owed her about 3*l.*: She hath told her several times since, that she was to be a witness for the duke of Norfolk against his duchess, and she was to have money for speaking: She heard Mrs. Tod bid her always keep in a story, and she would do well: She, the witness heard them talk of 30 or 40*l.* Mrs. Burton should get by being a witness; she is not paid the 3*l.* nor knows not whether she shall be paid; but last winter she found her in Henrietta-street, and she desired her, the witness, not to take notice of her name, nor what she said to her, for she, the witness, should have her money in a short time, when the trial was over. She told her the same a little before that, when she lived at major Wildman's; she takes it to be this winter was twelvemonth; she thinks it was the duke of Norfolk's trial:

She, the witness, keeps a coffee-house, called Joe's coffee-house.

William Purchase saith, That he knows *Anne Burton*; she declared to him about a year and a half after the duchess was charged with lying with *Mr. Germaine*, that she knew nothing of it, and that the duchess was wronged as much as ever any woman was, and that she hoped to see those punished that were the cause of the accusation. He saith, he went to see her as a fellow-servant, and he was not sent by any one, and going to drink together, they fell into this discourse: He hath talked of this matter several times (particularly to *Mr. Welborne*) since this business was spoken of, having heard she was to be a witness against the duchess.

Simon Varelst examined on the behalf of the Duke of Norfolk, against the Duchess. (e)

Simon Varelst saith, That he was at Windsor to draw the duchess of Norfolk's picture about

(e) *Observations upon the foregoing Evidence.*

There needs no more to the overthrowing of *Varelst's* evidence, whatever, it is, than the testimony of *John Rothmell*, to prove him *non compos*; witness his outrage upon *Rothmell*, the fantastical freak of sending at midnight for six rods to whip his sister-in-law; and another fit, for a matter of six weeks, when *Dr. Tenison* made him several visits to compose him, his frenzy being so violent upon him, that he broke loose from his keepers in a frosty night, and ran up and down the streets in his shirt, till he was taken up by the watch. This is the sum of *Rothmell's* testimony, and not one word opposed either to the credit of the witness, or the truth of the depositions. But it may not be amiss, after all this, yet to speak a few words to the likelihood of what *Varelst* has here deposed.

Mr. Germaine came to see him, he says, with a letter from the duchess, which he read to him, and in the name of the lord and lady *Peterborough*, desired him to say, the shirt and waistcoat were his; but not one word all this while of the contents of the duchess's letter. He says again, that the shirt and waistcoat were known to be his; now if they were known to be *Mr. Germaine's*, what good could *Varelst* do by taking the matter upon himself; when he saw fair words would not do, there was a purse of gold offered him, and that would not work neither. The duchess and *Mr. Germaine* were wonderfully altered, sure, in this case, from what they were in the business of *Owen* and *Ellwood*; there was no purse of gold, or duchess's letter to smother the matter, but, on the contrary, *Ellwood* was threatened, provoked, and defied, instead of cajolling her. And what was all this for at last, but only to remove a jealousy, and most ridiculously, at the same time, to condemn themselves by a confession out of their own mouths, and improve the suspicion into a certainty. Can any

six years since, and had the duke's closet to put the pictures in: When he had done, and had been at home two or three days, *Germaine* came to him much concerned, and said, You can do the duchess an extraordinary kindness, and will oblige the lord and lady *Peterborough* in the highest degree; then he shewed me a letter of the duchess to me, and read it to me: before that he told me there was a shirt and waistcoat, and they are known to be his: He said, I desire you to save the duchess's honour; I desire you will be so much a gentleman as to own them to be yours, and that you left them there: I answered, I was much concerned there should be such a trouble, but I desired to be excused, I could not do it without prejudice. He told me the lord and lady *Peterborough* had discoursed the duke of Norfolk upon it, and if it were owned but to be my linen, their discourse had wrought so much upon him, that if there came any evidence to assist them, he would leave off the pursuit. I refused still; he offered me a purse of gold, and told me I should make my fortune by it; but I still refusing, *Mr. Germaine* went away very much discontented: My wife being in the next room, over-heard the discourse between *Germaine* and me, and told it, and spoke of it, or else I had not been here now.

John Rothmell sworn a witness on the behalf of the Duchess of Norfolk, for invalidating the Testimony of *Simon Varelst*.

John Rothmell saith, That he lives in *Crown-court* in *Covent-garden*, and is a tailor: He saith, he knows *Simon Varelst*, and that he, the witness, married his half-sister: He saith, that about a quarter of a year after the business of the duchess happened at Windsor, he was at *Varelst's* house about eleven o'clock in the night, and *Varelst* locked the door, and told him, he had disparaged him by marrying his sister, and said, he would be his death, and drew his sword, and commanded him to strip, that he might slash him at his pleasure; and the said witness did strip for fear of his life, knowing his frenzy; and he struck the witness above a dozen times with his sword, and threatened still to have his life, if he, the witness, did not fetch his wife down that night, which was about twelve o'clock, and which was about six weeks after she lay in; and he was to bring her to be whipt, and to bring six

body imagine that they would not have done more to have suppress *Owen* and *Ellwood's* evidence, than *Anne Burton's*, or *Simon Varelst's*, who swears farther, that his wife heard all this discourse betwixt *Germaine* and himself in the next room, and told of it? Why was she not produced then, or the persons to whom she told it? But *Rothmell* swears, that *Mrs. Varelst* said, the duchess had ill people about her, and was much wronged, and that she herself could clear her about the scandal of the linnen; so that it is plain, *Mrs. Varelst* was not an evidence for the present turn.

rods with him: Upon his, the witness's promise to do this, he let him go, and he hath not seen him since, but in the street. He had half a year before that been distracted for six weeks, and he, the witness, fetched Dr. Tenison to him once, and the doctor came several times afterwards to him. One night in that sickness, he got from the woman that watched him, and run about two hours in his shirt and waistcoat, in a frosty night, and cut his feet, and was brought home by the watch: He saith, his, the witness's wife, was to have been here this day as a witness, and was here, but not having an hour to reckon, and being ill, is gone home with her midwife: He saith, he never durst go near Varelst since he abused him: He saith, that Mrs. Varelst, after she came from Windsor, said, That the duchess had ill people about her, and that she believed her to be much wronged, and said, she could clear her about the scandal of the linen that was found; for whether it was, or was not Mr. Varelst's linen, she could do it; and said, supposing I had brought my husband's linen down to be washed, and the laundress fetching of it, she might take it up, and leave some of it behind.

Thomas Foster examined on the behalf of the Duke of Norfolk, against the Duchess. (f)

Thomas Foster saith, That he was coachman to Mr. Germaine, and carried the duchess of Norfolk often, about two years since, in his coach, and brought her home, and the footmen have had four half-crowns given them; and Marting, a Dutchman, his helper, called it hush-money: It was by night, against a light, that he saw her face in the coach; it was about seven or eight of the clock at night, about this time a-year; he had seen her face once in the day-time, she looking out of a sash-window, two stories high, in Mr. Germaine's house, in Park-street; he knows her face well enough; he hath seen her before, and since she was married.

Witnesses sworn on behalf of the Duchess of Norfolk, for invalidating the Testimony of Thomas Foster.

John Hall saith, that he lives at the Coffin in Tuttle-street, and is a joiner; he saith he hath known Thomas Foster two years; and that about three weeks since, they being drink-

(f) There is not one word in Foster's evidence, true or false, that is worth the hearing, only it is levelled, upon the main, at the duchess and Mr. Germaine, and John Hall gives the reason of it; for this same Foster, he says, was Mr. Germaine's coachman, who, he said, would turn him off, and he would be revenged of him. Hosea Grimsley testifies also, that some three days before Foster was turned away, he said, he thought it no more sin to kill his master, than to kill a louse. So that the evidence he gives, was grounded on the malice he bore his master for turning him off.

VOL. XII.

ing together, and talking concerning the duke and duchess of Norfolk, he said, Mr. Germaine had done ill things by him, in turning him off in Ireland, and in turning him off here; and he was resolved to be revenged of him.

Hosea Grimsley saith, he lives with Mr. Germaine, and that he hath known Thomas Foster above a year and three months in Mr. Germaine's service; he heard him say, in the last week of December last, in Mr. Cook's house, about three days before he was turned away, that he thought it no more sin to murder his master, than it was to kill a louse; he saith he hath lived with Mr. Germaine about a year and a half, and that he never saw the duchess of Norfolk with him; and that he hath, ever since he came to him, lived with him in the place where he now lives: he saith, he never saw Mr. Germaine with a woman that was called the lady Bateman, nor knows any such name, or person.

Thomas Lloyd examined on the behalf of the Duke of Norfolk, against the Duchess. (g)

Thomas Lloyd saith, He knows one that went by the name of the lady Bateman, at her house at Vaux-hall; one Germaine, a wine-merchant, took the house; she came thither about Midsummer, 1689. She was off and on there until last Michaelmas. He hath seen the person that went by the name of the lady Bateman, and it is the duchess of Norfolk. Goodman was her chief man, and his real name is Reyner. Her brother, as was pretended, which he hath heard was Mr. Germaine, was the chief man that came there; sometimes he came once or twice a week, sometimes oftener; he is certain, as the servants said, it was captain Germaine that came there; every body said it was he: he knows him not by his name; by hearsay; if he could see him now, he could tell whether it was he; he believes Germaine was there every month in both the last summers; he cannot say that Goodman was ever there when Germaine was there; he saw him

(g) Lloyd's deposition is nothing at all to the purpose; or if it were never so pertinent, the falsities in it are sufficient to spoil it: for, in truth, his evidence, as to Mr. Germaine's being at Vaux-Hall, is only grounded upon hear-say and report, and yet he ventures to swear him to be there every month in both the last summers; and particularly, that he was several times there in May, June, July, and August, 1691. Whereas Alexander Herman swears, that Mr. Germaine went to Ireland in the summer 1690, on the last of May, or the first of June, where he stayed about four months, and that himself saw and served him there; and says farther, that he was at Brussels in May last. Anthony Morée says also, being Barber to Mr. Germaine, that he went beyond seas, and the campaign was almost over when he first shaved him, after he came back from Flanders, which is a flat contradiction to Lloyd's evidence.

3 N

several times there in May, June, July and August, 1691. Germaine's own hair was then pretty long: he cannot positively swear he was captain Germaine; he supposes, if he saw him now, he could know him.

Witnesses sworn on behalf of the Duchess of Norfolk for invalidating the Testimony of Thomas Lloyd.

Alexander Herman saith, That he served Mr. Germaine; he hath left his service a year and a half about eight weeks after he came from Ireland with the king; he served him a year and a half: Mr. Germaine was in Ireland with the king, in the summer, in the year 1690. He went to Ireland two days before the king that summer; he continued there four months: he believes he went the last of May, or the first of June; he came back with the king. He, the witness, served him all that while in Ireland, and saw him every hour and every day, and never stirred from him; he came from Ireland in the same ship with the lord Villers, the earl of Manchester, and Mr. Felton; and he went to Ireland in the Monmouth yacht, with the envoys of Holland and Brandenburg, and the marquis Mompavillon. He saith, Mr. Germaine was at Brussels in May last: he saw him there, and spoke with him there: he saw the lord Villers and the lord Lumley there with him; he lodged in the same tavern there with him, for four days, and saw him not after: he, the witness, coming then for England, left him there. He never knew him wear his own hair; his own hair is dark brown: he never knew him appear abroad without a wig; his hair is about half a finger long; he wore a fair perriwig: he saith, he, the witness, was quartered in a little tent behind him in Ireland; he could not stir but he heard him: he saith that four weeks after he saw him in Brussels, he saw him walking in St. James's Park.

Anthony Moree saith, He was barber to Mr. Germaine; the first time he shaved him was about five or six years since; his own hair is brown; he shaved his head very often; he shaved him before he went to Holland, and since he came home: he never saw his hair long enough to cover his ears; nor saw him ever wear his own hair, but a perriwig; he shaved him for a year and a half, before and since he went for Ireland; he shaved him always at his own house near the park: he or his man shaved him ever since he came from Holland to this day: he or his man shaved him the night before the king went for Holland: he saith, that Mr. Germaine, when he went away, said it would be a month or two before he should come back, but he knows not how long it was: This was at his house next door to the Cock-pit; he shaved him generally since the king came into England: he saith the campaign was almost done when he shaved him, after he came from Flanders.

The next witnesses produced by the duke of Norfolk, were Peter Scriber, Andrew Anderson, Robert Hemming, John Reynolds, and Margaret Foster. (h)

Peter Scriber saith, That he let an house, at Vauxhall, to Mr. Daniel Germaine, Midsummer was two years, viz. 1689, at 24*l.* per annum. He told him, that two ladies that were to come from Holland were to live there; one was Mrs. Bryan, the other the lady Bateman; they went by the name of Daniel Germaine's and captain Germaine's sisters. The ladies came to the house about ten days after it was let; one Goodman, that attended them, was off and on there all the time that the lady Bateman lived there, which was off and on till September last: this Goodman is the same man that was heard here the other day, as Henry Reyner; he remembers not, nor can be positive, that he hath seen captain Germaine there at any time; he cannot say he knows him; he hath not seen him seven or eight years. He saith, he, the witness, is generally absent in the day-time; Goodman, he saith, came off and on to the lady Bateman's, from the time she came thither till the time she went away.

Andrew Anderson saith, He knew one that went by the name of the lady Bateman a year and half ago, at Vauxhall, from last spring was twelve-months till near last Michaelmas, but hath not seen her since; he knew one that went by the name of Goodman that used the house; and that Goodman is Reyner: he knew a gentleman that lived by the Cock-pit, that went by the name of my lady's brother, which he used to take into his boat at Channel-Row, and carry to Mr. Scriber's house at Vauxhall. He carried him several times backwards and forwards; since Midsummer he hath carried him twice; he used to carry him to the back stairs of Scriber's house: the same day he fetched him, in the forenoon, from the parliament stairs, or Channel-Row, he carried him back in the afternoon: he had a light wig. He, the witness, hath carried wood from Scriber's house, from the person that went by the name of the lady Bateman, to the house by the Cock-pit; one Nicola used to receive it into carts, at the Wool-stable. This Nicola was, he supposes, servant to the gentleman that lives in that house on the other side the Cock-pit; he hath been at the door, but never in the house: he saith he bought the wood of the

(h) *Observations upon the Depositions of Peter Scriber, Andrew Anderson, Robert Hemming, John Reynolds, and Margaret Foster.*

These testimonies are all foreign to the charge against the duchess; her grace's being at Vaux-Hall, and the going under borrowed names, is all acknowledged, and the reasons already given; besides, the mistakes in them are so few and trivial, that it is not worth while to detect them.

bargemen, by the person's order that was called the lady Bateman.

Robert Hemming saith, He knew one that lived near the dye-house at Vauxhall, that went by the name of lady Bateman; he saith, he was gardener to the house near two years since, after Midsummer next will be three years; he knows not the lady, otherwise than by the name of lady Bateman; he hath seen gentlemen come there, but he knows not their names; he knew his servant Goodman; Mr. Knolles, that waited on the lady, and was chief gardener, paid him his wages; he knew Goodman by no other name.

John Reynolds saith, That he saw the lady that went by the name of madam Bateman, several times walking in her garden, living concealed; that is, she lived privately, and had but little conversation amongst her neighbours. The sixth of November last, being invited to dine at a friend's at Westminster, he met between the lord Peterborough's and the ferry, a lady whom he believed was the same lady Bateman; and because he would not be under a mistake, he enquired of one that followed her, and he told him, it was the duchess of Norfolk; his business is at the next door to Scriber's house: he hath seen a gentleman walk with the lady in the garden, that his, the witness's servants have told him, was Mr. Germaine; he hath known the lady live in that place above two years and half. He knew Goodman, that lived there, who now goes by the name of Reyner.

Margaret Foster saith, She knows one Nicola, he is Mr. Germaine's gentleman, that lives next house to the Cock-pit. Mr. Germaine hath lived there two years; her husband was his coachman; it is the Royal Cock-pit, in Park-street, or Carteret-street; Mr. Germaine sent for her on Sunday fortnight, to enquire for her husband, who, he told her, was a witness against him; and his brother (who was present) told her, that his brother did not send for her to bribe her, but to tell her husband he should not forswear himself, for there was a pillory.

Jane Wadsworth examined on the behalf of the Duke of Norfolk, against the Duchess. (i)

Jane Wadsworth saith, That she sold drink; and going into Mr. Germaine's house, a little

(i) *Observations upon the Evidence of Jane Wadsworth.*

Jane Wadsworth swears, She saw the duchess at Mr. Germaine's, and what discourse she had afterward with Herman, Mr. Germaine's footman, and that a Dutchwoman sent her up stairs for a pint pot, by which accident she saw the duchess: she says also, that she saw Welch Frank deliver a letter to Mr. Germaine. Frances Knight being produced, Wadsworth swears that is the woman that was called Welsh Frank, and that she saw her give another letter once to Mr. Nicola, Mr.

before the king went into Ireland, for a pint pot, she saw a Dutchwoman, who bid her go up stairs for it; and going up for it, she met the duchess of Norfolk in a night-gown, one side lapt over the other side, with Flanders-laced night-cloaths on her head, without a hood on: about two hours after, Herman, footman to Germaine, came into her house, and she saying to him, you have got the duchess of Norfolk at your house: he said, no duchess of Norfolk: I said it was she, for I had seen her some hundreds of times: he said, it was his master's lady, and his master's duchess, no

Germaine's gentleman; there are also four witnesses produced for her credit, that say they know no ill by her.

But then Grace Cook, on the other hand, swears, That Jane Wadsworth told her, that she thought she had seen the duchess at Mr. Germaine's; but was now satisfied that it was not she, and cursed herself and her children, if she would take her oath that it was the duchess; this was upon her receiving a subpoena, to appear and give evidence. Hosea Grimsley, John Hall, and Margaret Condry, were present at this discourse.

John Hall swears, That she said that she saw the duchess of Norfolk at captain Germaine's, but upon a farther sight of her, she finds she was mistaken.

Hosea Grimsley swears to the discourse, the very words of the curse, and the persons that were in company; all agreeing with the deposition of Grace Cook. Margaret Condry swears to the very same particulars.

Alexander Herman deposes, That he never saw Wadsworth in his master's house, nor ever had any discourse with her concerning the duchess; and he being a person turned away in disgrace from his master, would have made no scruple to publish any secret of that kind, at least, to swear the truth, when upon his oath.

Mary Pennington says, That Jane Wadsworth was her servant a while, but was not honest, and that she had filched some of her's and her husband's linnen, and was going away with it.

Frances Knight denies the knowledge of Wadsworth or any discourse with her: she never saw her at Mr. Germaine's, nor ever carried any letters thither.

But here are two witnesses brought in now to arraign the credit of John Hall, which is as much as to say, that they had no exceptions to any of the rest, or, which is all one, to the truth of the matter; for John Hall's evidence is by them confirmed over and over. And what is it that these two witnesses have to say at last? Henry Dagley says, that he believed it was the duchess he saw at Mr. Germaine's, but could not affirm it. And John Hoskins says, that they said it was the duchess, but he could not speak it of his own knowledge; which amounts to no more than a bare hear-say.

duchess of Norfolk; why should not my master have a duchess as well as the duke of Norfolk? She hath known Mr. Germaine three years next Midsummer, having lived there so long. Herman enquiring where I saw her, I said, upon the stairs; he told me, I should not have gone up the stairs: I told him, the Dutchwoman bid me go up; it was about eleven o'clock in the day-time that she saw her: he bid me say no more of it; for if his master knew it, he would kill the Dutchwoman. She saw Welch Frank, about two months since, deliver a letter to Mr. Germaine, and she hath seen her go to the house often; she hath known the duchess ever since, and before she was married.

Francis Knight (examined before for the duchess) being called in, the witness saith, This is the woman that was called Welch Frank, whom she hath often seen at Mr. Germaine's; she saw her, about the time the king came home from Flanders, give another letter to Mr. Nicola, Mr. Germaine's gentleman.

Witnesses produced by the Duke of Norfolk, to speak to the Credit of Jane Wadsworth.

John Prince saith, He hath known Jane Wadsworth twelve years, to be a good, honest, poor woman, and of good reputation, to the best of his knowledge; and that she takes care to maintain her family; he believes her to be an honest woman, and that she would not take a false oath; he knew her at the Horse-ferry, and in Carteret-street.

Emery Arguis saith, That he hath known Jane Wadsworth thirteen or fourteen years; he never knew her but of as good reputation as any in the parish; she is poor, but he believes she would not take a false oath.

Robert Elmes saith, That he hath known Jane Wadsworth twelve or thirteen years; he thinks her a very honest woman; he never heard but she was an honest poor woman, that endeavoured to live and maintain her family; she is of good reputation.

Charles Read saith, He hath known Jane Wadsworth twelve years, and something better; he never knew her to do an ill thing, but she was always a careful, industrious woman; he hath known her married all that time, and she never was a servant in that time.

Henry Dagley, senior, saith, That he hath known Jane Wadsworth sixteen or seventeen years; she was always a very civil woman, and he never heard other by her.

Witnesses sworn on the behalf of the Duchess of Norfolk, to the invalidating the Testimony of Jane Wadsworth.

Grace Cook saith, That she knows Jane Wadsworth; she hath lived near her four years; she came into the witness's house with a paper in her hand, and asked her, who left it? saying, she knew nothing of it: she said, that she had said, that she had seen the duchess of Norfolk in Mr. Germaine's house, but she had not seen her a great while, and now that she

had seen her, she was satisfied that it was not her; and she wished, that she might burn in the fire, and never go home to her children, if she would take her oath of it. The paper was to warn her to this House; it was the first night the papers came out that she said this; Hosea Grimsley, John Hall, and Margaret Condry were present when she said this: she saith, she lives next door but one to Jane Wadsworth.

John Hall saith, That he hath known Jane Wadsworth above a year: About a fortnight since, she came into Mrs. Cook's, with an order in her hand, but knew not who left it; and said, she could say nothing to it: Mrs. Cook saying again, you must say something to it, else you had not had this order from the House; then she said, she had been at the duke of Norfolk's, and had told the duke, that she had chanced to go into captain Germaine's house for a pint pot, and she chanced to see the duchess of Norfolk; but she said she might be mistaken, for she had not seen her in seven years before, but she had seen her once or twice since she came out of France, and that was none of the duchess of Norfolk which she saw on captain Germaine's stairs; whereupon Hosea Grimsley asking her, if she were sure it was not she? she said, she was sure it was not; she wishing that she might burn, and never go home to her children, if she would swear it, for she could not swear it. Hosea Grimsley, Grace Cook, and two other women, were present in Grace Cook's house when this discourse happened, which was the very night the order came out. He saith, he wrought in Mr. Germaine's house; he saw twice or thrice ladies there in masks: one of the ladies in the mask gave order to take down a partition: she was reported to be captain Germaine's sister.

Margaret Condry saith, She knows Jane Wadsworth, who came into Mrs. Cook's the first time she was subpoenaed, and asked, who left the paper in her hand for her? she said, she went to Mr. Germaine's for a pot, and she thought she saw the duchess of Norfolk there; but she saw her since her coming from France, and was satisfied it was not her, and wished she might never see her children, and burn, if ever she saw her there.

Alexander Herman saith, That he knows Jane Wadsworth well; he never had any discourse with her concerning the duchess of Norfolk's being in Mr. Germaine's house; he saith, he hath drank often at Wadsworth's house, but he never had any discourse with her concerning the duchess of Norfolk, nor never saw this woman in his master's house in all his life: he waited on his master at table, and in his chamber, all the time of his service, which was a year and a half; he never saw a lady in a mask in his master's house.

Mary Pennington saith, That she knows Jane Wadsworth; she was her servant, but not long, for she was not honest. She, the witness, being gone out, at her return, she met her going away with her the witness's linen, and

her husband's, bundled up : This is about 11 years since.

Frances Knight saith, That she knows not *Jane Wadsworth*, nor never discoursed with her, nor never saw her at *Mr. Germaine's* house, nor did the witness ever carry any letters thither.

Witnesses examined on the behalf of the Duke of Norfolk, against the Credit of *John Hall*.

Henry Dagley, junior, saith, That he knows *John Hall* ; he was a workman at *Mr. Germaine's*, when he, the witness, wrought there ; and *Hall* hath often said to him, that he believed it was the duchess of Norfolk that was there in the mask, and that gave him directions in his work there ; this was at *Mr. Germaine's* house in Park-street : he could not affirm it to be true, because she was masked, but really believed it.

John Hoskins saith, That *John Hall* was employed by *Mr. Germaine*, and a lady that was masked ; the lady was the first that ever shewed him his work what he was to do, and the first work he did was to take down a partition ; we talking amongst ourselves, that it was the duchess of Norfolk. *John Hall* has said, that that lady was the duchess of Norfolk ; not that he could say so of his own knowledge, but that he hath been often told it was so : he saith, that *Hall* told him, the day he the said *Hall* was examined here, that if he had been asked more, he could have said more.

Witnesses sworn on the behalf of the Duchess of Norfolk, intimating a seeming Reconciliation. (k)

Mrs. Judith Stourton saith, That she was servant to the duchess of Norfolk, when the

(k) *Observations upon the Depositions of Mrs. Judith Stourton, Edith Sawbridge, Elizabeth Camell, Mr. Matthew Scott, and Mr. Robert Welborne.*

The reader will find this discourse about *Mr. Germaine* and the duchess, to be a scandal of a matter of six years standing ; *Hudson*, a cast footman, has sworn to the shirt and waistcoat, and that he immediately told my lord of it. *Anne Burton* swears likewise (with another false oath between her teeth) that this shirt and waistcoat were sent by the duke to the lord *Peterborough's*. It follows now to be noted, what course has been taken from the first to the last, for a thorough discovering of the truth of this matter, and how it comes to pass, that the thunderbolt should hang in the air so many years after the breaking of the cloud.

Mrs. Stourton is here upon her double oath, first under the shrift of the duke and my lord *Peterborough*, who took her privately, and adjured her, as ever she hoped to see God in Heaven, to declare what she knew as to the duchess being an adulteress ; she purged herself upon her hopes of salvation, that the

report was of the duchess and *Mr. Germaine*, which was about a week before the duke and duchess went to France : she was asked by the lord *Peterborough*, in the presence of the duke of Norfolk, in the duke's house in *St. James's-square* (where they shut the door), as she would answer it to the face of Almighty God, if she did know whether his daughter was an adulteress : her answer was, That as she hoped to see God in heaven, the duchess was as virtuous as any woman alive, for aught she knew. She saith, that what she then said is true ; and if she should pretend to say more, she should wrong her. She saith, That no one was present, besides the lord *Peterborough* and the duke, when they examined her ; and that she saw no shirt or waistcoat at that time ; and that she doth not remember she said to *Mrs. Webb* any thing concerning the duchess and *Mr. Germaine*, and thinks she never spoke with *Mrs. Webb* ; and she was not at Windsor when the duke was at Portsmouth : she saith, there was a report of scandals, which she was sorry for.

Edith Sawbridge and *Webb*, produced on the behalf of the Duke of Norfolk, to discredit the Testimony of *Mrs. Stourton* (l)

Edith Sawbridge saith, That the Tuesday following this unhappy discourse concerning

duchess was as virtuous as any woman alive for aught she knew : she swore the same thing over again at the bar of the House of Lords ; and being interrogated about the shirt and waistcoat before spoken of, she swore likewise, that she saw no shirt or waistcoat at that time.

(l) *Edith Sawbridge* was now produced against the credit of *Mrs. Judith Stourton*, and lays the stress of her evidence upon what *Mrs. Knifeton* said, which has been the very pinch of the question throughout the whole cause, and the prosecution has still been at a fault when it came to any material point ; that is to say, only the hear-say witnesses are produced, and those that can speak upon knowledge, and positively to the fact, are withdrawn, or concealed, contrary to the practice and reason of all judicial proceedings.

Mrs. Stourton is called in again to confront *Edith Sawbridge*, and denies every article in her deposition, one by one, that is of any moment ; but at the same time there appears no exception, on the other hand, to the credit of *Mrs. Stourton* : neither is it to be imagined that any woman should dare to swear false, in a case where two such witnesses should be privy to the perjury.

It follows now to be noted what course has been taken for a thorough discovery of this intrigue, according to the usual methods of honour and justice. The examination of *Mrs. Stourton* by the duke and my lord *Peterborough*, was as solemn, strict and private as the case required ; and it was while the clamour was fresh too : so that there was no

the duchess of Norfolk, Mrs. Stourton came into her chamber, and she telling her what had happened at Windsor, Mrs. Stourton replied, this is nothing but what she expected before now: The witness replied, That if she, the witness, had been as near the duchess as the said

time lost when they entered upon the scrutiny. It will be seen in that which follows, by what degrees the heat of this calumny cooled, and what brought it on again.

The duke and duchess went for France together, about a week after the breaking out of this clamour, and Elizabeth Camell waited upon the duchess, who swears, that they went lovingly together, and parted with tears on both sides; my lord telling her grace at parting, that he would fetch her away suddenly. They eat and drank together every day, and were frequently together in private; but she cannot say they lodged together. So that thus far, in all outward appearance, the misunderstanding seemed, in some measure, to be composed.

Mr. Scott speaks only to the matter of monies and accompts, which is little or nothing to the purpose in this place, except only as to the 125*l.* mentioned to be paid by him for the duchess's use; which was a quarterly payment out of 500*l.* per annum, adjudged, and ordered by the high-commission court to be paid to her, in lieu of alimony.

But Mr. Robert Welborne comes to the very merits of the cause, and the present state of the question. He deposes, That in November last the duke sent for him, and told him (among other things by the bye), that the duchess had some pretensions upon Castle-Rising, and also upon Billing; and thereupon ordered the witness to give her grace to understand, that if she would consent to the sale of those estates, and make the duke easy in that particular, let her but consider wherein he himself might make the duchess easy too, and upon those terms he would do it.

His grace told the witness farther, That there being one or two-and-twenty Catholic heirs to the family, before one Protestant heir, if (says his grace) I would bring a bill of divorce, (I do not say it to threaten her) I could obtain it on that account. The witness acquainted both the duchess and the lady Peterborough, the very same day, with the substance of this message, her grace taking it very heinously to be told of a divorce; and the next day the duchess shewed the witness a letter she wrote to the duke upon this occasion, declaring, that for Castle-Rising and Billing she would never part with them.

It appears from hence, That upon the examination of Mrs. Stourton, and other necessary enquiries into the grounds of this scandal, the violence of the first impression was so far taken off, that according to the evidence of Elizabeth Camell, my lord was pleased to treat the duchess with all instances of tenderness and respect, both upon their passage into France,

Mrs. Stourton, she would have prevented all this. To which Mrs. Stourton answered, Would you have had me whipt at the cart's-arse? The discourse we had was, that Mrs. Knifeton told her, when I came from London on Friday night, that she told me she was glad

and upon the places there, those of the bed only excepted. In this state matters have continued some five or six years now, without any speech, or thought of a divorce, that ever the duchess heard of, until the middle of November last, in a message by Mr. Welborne from the duke, and that was but a certain condition neither: however it was improved afterwards into a bill, that upon the 7th of January following was formally brought into the Lords house.

The reader will need no other light to a true understanding of the strait her grace was in upon this surprise, and the disadvantages she was exposed to, than what he has here before him, in the order of the journal itself: where he will find the duchess so scanted for time to produce witnesses, and prepare her defence, that it was a wonderful providence she should do so much as she did; though in the mean while, her grace has lost the benefit of several considerable witnesses, for want of time to find them out, and bring them together. Now as for Mr. Welborne's deposition, it carries the countenance rather of a treaty than an accusation; the duke's part is only a calm, deliberate discourse, consulting the reciprocal ease both of himself and the duchess. Terms are proposed and promised, and not one word or glance of reproach from one end to the other of it. Mr. Welborne, (upon the duke's asking him, at the Lords bar, if by his discourse he understood an inclination to live with the duchess) it is true, did not gather from his words, as if he had any thought of living with her; the only hard thing said, was that about his catholic heirs, which seemed to turn the case of adultery into a case of religion. Let any creature judge now, whether the duchess durst to have stood it out thus, if she had been guilty of so foul a crime, when she might have been safe and free, as appears by the proposal, upon terms so much more easy.

To make a short summary now of the whole, a word first to the character and quality of the witnesses.

There is Owen, a street-porter, brought in as a witness to the privacies of the duchess's bed-chamber, besides several unanswerable exceptions to the particulars of his evidence. There is Ellwood, a cobbler's wife, and a jilting little slut, that is as palpably detected of falsity as the other. Hudson, a poor tricking footman, that was turned off for his ill behaviour. Burton, a beggarly wench, that cheated her landlady, and forswore herself in this cause at the Lords bar. Varelst, a painter, and by intervals a madman. Foster, a coachman that was turned off by his master, and swore to be revenged of him. Lloyd, under several manifest mistakes, but nothing to the main cause.

I was come, for she expected her throat to be cut every night since my lord duke went to Portsmouth; I asked her the reason of her fear; she answered, Germaine had laid with my lady duchess ever since my lord duke went to Portsmouth; that when he came home he would hear of it, and he would kick her for a bawd; and if she should tell my lord, Germaine would cut her throat. I bid her have a care what she said, for these were dangerous words: How can you prove this? she said, it was very true. The witness asked her (Mrs. Knifeton) how she knew this? She said, Germaine, instead of going home, went into the closet: The witness cannot say, that she said all this to Mrs. Stourton, but the greatest part she did say. Mrs. Stourton said, this was nothing but what she expected before. This was the Tuesday after my lord duke came from Portsmouth; this was about Bartholomew-tide, in the first year of king James's reign.

Mrs. Stourton called in, to confront this Edith Sawbridge, and examined.

Mrs. Judith Stourton further saith, That she saw Mrs. Sawbridge once in the duke's house in St. James's-square, and they talked of the slander of Germaine and the duchess of Norfolk: she saith, she, the witness, never heard Mrs. Sawbridge say, that Mrs. Knifeton

Scriber, Anderson, Hemming, Reynolds, and Margaret Foster, say not one word to the purpose. Wadsworth, a pilfering servant, that robbed her mistress, and her evidence most notoriously exposed.

Now, as these witnesses are of very little value upon the stock of their own credit, so the witnesses against them cannot be denied to have a fair reputation, on the other hand. And it is very extraordinary, that after the naming of so many persons in their depositions, that said, or did, or heard, or saw this; that the prosecutors have not brought in so much as one creature to second the swearing evidence; though it is sufficiently known, they could have found them, if they would have ventured the cause upon that stress. It is to be considered once more, what a difference there has been betwixt the demeanour of the one side and the other, towards the evidence. What promises, flatteries, and engaging obligations on the one hand, and not so much as one word or deed, directly or indirectly, that looked like a practice or a prepossession on the other part of the duchess.

Let this be taken in the softest sense; for it is a great misfortune, when officious instruments, that are forewarned to broach scandals, meet with easy and good-natured dispositions, that are too open perhaps to receive them. This may serve in some measure, perhaps, to remove the evidence of those that are not wilfully deaf and blind; and for the rest, it is left to time and Providence to bring the truth to light in its due season, and to vindicate the cause of the innocent and oppressed.

should say, that Germaine laid with the duchess every night at Windsor: she denies that she said to Mrs. Sawbridge, that she expected to hear that before now; she never said to Mrs. Sawbridge, would you have had me whipt at the cart's-arse? She saith, she remembers not that Mrs. Sawbridge told her, that Mrs. Knifeton said, that she was afraid that her throat would have been cut when the duke was at Portsmouth: she remembers not that she asked Mrs. Sawbridge the reason of Mrs. Knifeton's fear, or that she told her any thing of Mrs. Knifeton saying, that Mr. Germaine had laid with my lady every night at Windsor: she saw Mrs. Sawbridge, and discoursed with her; but she cannot say what discourse she had with her.

Mrs. Elizabeth Camell saith, That she went with the duke and duchess of Norfolk into France; they went together very lovingly, and parted so: she thinks the duke staid with her about a fortnight; the duke's eye was ill, and my lady went often to him; and when she did so, we retired: my lady drest his eye; they eat and drank together every day; they did not lodge together that she knows: my lord told her at parting, at the grate in the monastery, that he would fetch her away suddenly; and they parted kindly: Mrs. Lawson was in the monastery with the duchess, the witness continued there about seventeen months; my lord exprest a great deal of kindness to my lady in going, and while he was there; there were tears on both sides at parting: when my lord and lady were together in the house called l'Hotel de Terrau, in Paris, we used to withdraw, not knowing what they had to say together.

Mr. Matthew Scott saith, That he paid several sums to the duchess from the duke: in May, 1688, he paid 125*l.* for the duchess to Mr. Cragg: he paid 2 or 300*l.* into France, when the duke and duchess were there: he cannot say that he remitted any money into France after the duke came home: he knows not that any money was paid to Mr. Mourton for my lady by the duke's order.

Mr. Robert Welborne saith, that about the middle of November last, the duke of Norfolk sent for him by Mr. Scott, to meet his grace in his room, by the Lords house, which accordingly he did: his grace told him, there had been some messages and proposals by sir Robert Clayton and sir Robert Howard; but he looked on them both to be men of great business, and could not attend on such matters, and therefore he sent for him, knowing him to be willing to do any services between them. The first thing his grace desired, was to acquaint his wife, and the lady Peterborough, and he thinks he named the lord Peterborough, that he expected to be indemnified from the duchess's equipage; for, says he, I hear she is setting up for a great equipage, and I desire to be free from being obliged to pay for any of that: he told his grace, that he thought he was misinformed, for all the equipage he saw,

was a coach, coachman, two footmen, a pair of horses, and two or three more servants. But, says his grace, I formerly paid money for her to one Mourton, and should be unwilling to do so again. I presume, my lord duke, said he, that was a debt contracted while your grace and the duchess lived together. But, says his grace, pray do you acquaint them of it, for this is what I expect.

Next, says his grace, my wife has some pretensions upon Castle-Rising, which I could sell without her consent, by losing two thousand, or two thousand five hundred pounds: and besides, I find she hath also a pretension upon Billing, which I never knew till very lately, when I was upon selling of that reversion; but I should have been an ill man to pretend to do that, if I had known of any such incumbrance; therefore, I would have you tell my wife, that if she will consent to the sale of those estates, and make me easy in that particular, let her consider wherein I may make her easy, and I shall do it: I know she was a great lover of Drayton, and I suppose is so still; and she did once offer me a considerable sum of money for my life in it: therefore let her consider of this matter, and if she can propose any thing for her ease and quiet, on these terms I shall comply with her.

I do not say it to threaten her: but I am told, that for the reason of there being either one and twenty or two and twenty Catholic heirs of my family, before one Protestant one, if I would——(here his grace stopt,) says his grace, you understand me: making no answer, his grace was pleased to say again, if I would

bring in a bill of divorce, I should obtain it on that account. He told his grace he would be sorry to hear of any such thing; but in obedience to his grace's commands, he should acquaint the duchess with it. Accordingly he did, the same day, and lady Peterborough both. Her grace was very angry at the message, especially at that part that mentioned a divorce; and he was sent the next morning to Mr. Scott, to desire him to acquaint the duke, that as he was my lord Peterborough's servant, it was not fit for him to receive nor bring such messages: but if his grace had any thing to say, it was most proper by a servant of his own, or to send for one of her's. I carried the message the next morning to Mr. Scott, and at my return home, the duchess shewed me a letter she had writ to the duke to the same purpose, and which was sent to his grace, but not by him; the duchess did declare, when he proposed the sale of Castle-Rising and Billing, as the duke had desired, that she would never consent to it. By any of this discourse it did not appear to him that the duke shewed any inclinations to live with the duchess, nor did he understand it so.

The evidence being ended, after a long debate thereon, the question was put:

'Whether the Bill, intituled, an Act to dissolve the marriage of Henry duke of Norfolk, Earl Marshal of England, with the lady Mary Mordant, and to enable the said duke to marry again, shall be read a second time?'

It was resolved in the negative.

MATTH. JOHNSON, Cler'. Park.

370. The Trial between HENRY Duke of NORFOLK, Plaintiff, and JOHN GERMAINE, Defendant, in an Action of Trespass on the Case, at the Court of King's-Bench, at Westminster: 4 WILLIAM & MARY, A. D. 1692.

THE Declaration was in Trinity Term, the 4th of William and Mary, king and queen. To which the defendant pleaded not guilty within six years. And it is replied, That it is within six years; whereupon issue was joined, and a Jury of twenty-four knights and esquires being returned, twelve did appear at the bar, and were sworn, viz. sir Michael Heneage, of St. Andrews, Holborn; sir Thomas Grantham, of Sunbury; sir Charles Humfrevill, of Westminster; sir William Hill, of Teddington; Ralph Hawtry, of Ryslip, esq.; Robert Sheffield, of Kensington, esq.; John Pagett, of Drayton, esq.; Hugh Squire, of Westminster, esq.; John Coggs, of St. Clement Danes, goldsmith; Charles Pryor, of Highgate, esq.; Richard Craddock, of Hornsey, esq.; and William Withers, of Cripplegate, esq.

After the Jury were sworn, the counsel for his grace the duke opened the cause.

Mr. Banister. May it please your lordship, and you gentlemen of the jury, this is an action brought by Henry duke of Norfolk, against one John Germaine. The plaintiff sets forth, That the first of April, in the second year of the reign of the late king James, the defendant did, by unlawful ways and means, entice away his duchess, by which means he had not the benefit of her society; and, by lascivious conversation, committed adultery with her, and caused her to commit adultery: And this he layeth to his damage 100,000*l*. If we prove that he did so, we hope you will give us good damages and costs.

Att. Gen. (Sir John Somers). May it please your lordship, and you gentlemen of the jury, this is a very melancholy thing to be told; yet it is fit the age we live in may know it, so as the offender may be punished. The duke of Norfolk is the first duke in England; installed knight of the most noble order of the

garter; lord high marshal of England, and one of the lords of their majesties' most honourable privy council: and he to be thus abused, perhaps none found any such cause to come before any court. It is a hard thing, as this case is, for us to produce strong and pregnant evidence: but our proofs are such, as I am ashamed to repeat them; but desire the witnesses may tell your lordship, and the gentlemen of the jury, what they know. It was not kept secret, but it was known so publicly, as all the kingdom did ring of it; and how the defendant had the duchess frequently to his house; and how they lived in adultery: My lord, we will take that method that is most plain; therefore it will be necessary to give your lordship an account of something of the beginning of this matter.

L. C. J. (Holt). As to the time.

Serj. Tremain. They would make this a sort of a running account.

Sir W. Williams. It must be within six years; before the 26th of May last, if they will prove any adultery; before, it is nothing.*

L. C. J. If the witnesses be not heard, it is impossible to tell whether it be within the statute of limitation.

Just. Eyres. If we hear it, and find it out of time; then when we have heard it, we can tell the jury how it is, whether it be within the time; and they are to take notice, if they open evidence that goeth beyond six years, I hope your lordship will not suffer them to do that.

Serj. Thompson. Here are anticipations, directions, and what not.

Att. Gen. We will call our witnesses, if your lordship please.

Court. Rowland Owen, do you know the duchess of Norfolk?—*Owen.* Yes.

Att. Gen. Do you know John Germaine?

Owen. Yes, very well.

Att. Gen. Pray tell my lord and the gentlemen of the jury what you know of him.

Owen. I have seen him several times dine and sup at my lord duke's house.

Att. Gen. Tell what familiarities you have seen pass between the duchess and Germaine.

Owen. I was ordered by one Henry Reyner, to go down to Whitehall with plates and a table-cloth, and he would go to the Blue Posts for some things, and there was a supper to be that night: then to go down to Whitehall: when I came there, at my lord duke's apartment, I opened the door, and afterwards going into a room, I saw Mr. Germaine and the duchess in bed together; and the duchess pushed me out, and asked me how I durst be so impudent as to come in, and chide me.

L. C. J. Who chide you?

* If the action for crim. con. be trespass, the limitation will be 4 years; if case, 6 under 21 Jac. c. 16. It seems to be considered to be case (*Cooke v. Sayer*): but in either way of considering it, the plea of 'not guilty within 6 years,' not being specially demurred to, is a good bar. *Macfadzen v. Olivant*, 6 East, 387.

Att. Gen. He saith, my lord, the duchess of Norfolk.

Serj. Tremain. Pray when was this?

Owen. About seven years since.

Serj. Tremain. Owen, you speak of something of a supper, and that you went down to Whitehall; who gave you the key?

Owen. One Henry Reyner.

Sir Tho. Powis. What, are you a street-porter?—*Owen.* I was usher of the hall.

Att. Gen. You were servant to the duke, were you not?—*Owen.* Yes.

Sir Tho. Powis. Were they at supper that night?—*Owen.* I cannot tell.

Sir Tho. Powis. You carried down plates?

Owen. Yes.

Sir Tho. Powis. This you say was seven years ago; who did you tell it to?

Owen. To the housekeeper.

Sir Tho. Powis. Who was she?

Owen. One Mrs. Webb.

Sir Tho. Powis. Did you tell nobody else?

Owen. No, indeed, I will not lie.

Att. Gen. We will call another witness. Margaret Ellwood, do you know the duchess of Norfolk?—*M. Ellwood.* Yes, my lord.

Att. Gen. Do you know John Germaine?

M. Ellwood. Yes, my lord, about seven years since; but I do not know whether I know him now.

Att. Gen. Pray tell my lord and the jury what you know.

M. Ellwood. It was my business, being house-keeper, to look after my proper affairs, and I being called down, I saw my lady and Germaine; and saw my lady in an ill posture upon the stools, and my lady said to Germaine, 'Kick her.'

Serj. Thompson. Tell how you saw her.

M. Ellwood. Why, when I saw her, I saw her bare knee, and Germaine was near to her; and then I came away, she being angry, and so he came from her.

Court. Were his breeches down?

M. Ellwood. His breeches were down, and his hat and sword lay upon the table.

Att. Gen. What posture was the duchess in?

M. Ellwood. I saw her bare knee, and he—

Att. Gen. Was she lying down?

M. Ellwood. Yes; and the Saturday after I did see Mr. Germaine come in, and he laid his hat on the table, and unbuttoned himself, and went to bed to her.

L. C. J. How do you know that?

M. Ellwood. I opened the drawing-room door, and looked through the key-hole of the other door where they was, and saw them go to bed.

L. C. J. How do you know he was in bed with her?

M. Ellwood. Why I saw them, for there was a wax candle in the chamber, and I could see them easily.

L. C. J. What time was this you say you saw them in bed? Had they no curtains?

M. Ellwood. Yes, my lord, they had; though they were drawn on both sides the bed, they left them open at the foot.

Court. Did you ever pretend this before?

M. Ellwood. Yes, I did.

Court. Did you ever swear this before?

M. Ellwood. Yes, my lord, in the parliament I did.

Sir Tho. Powis. You have lived in several places since; did you never tell any body's servant?

M. Ellwood. To nobody but Mrs. Webb: and my lady gave orders next morning, that I should be put away; but I heard no more of it; but I staid.

Att. Gen. Do you know any thing else?

M. Ellwood. I was making my lady's bed with one Anne Burton, and I found Mr. Germaine's handkerchief and ruffles in the bed, at one time.

Att. Gen. Do you remember any shirt and waistcoat that was found?—*M. Ellwood.* Yes.

L. C. J. Did you find his handkerchief and ruffles in my lady's bed?—*M. Ellwood.* Yes.

L. C. J. Did you never see him come down stairs?—*M. Ellwood.* No, my lord.

L. C. J. It is very much you never saw him come down stairs.

M. Ellw. We set traps for him to fall over; but he never came down to fall over them.

Serj. Tremain. Do you know any thing but in the first year of king James?

M. Ellwood. No, my lord, not I.

Att. Gen. We will call another witness, Mrs. Benskin. I think, Mrs. Benskin, you are married?—*Mrs. Benskin.* Yes.

Att. Gen. Pray tell my lord and the jury what you know.

Mrs. Bens. My lord, I was house-maid and servant to the duchess, in the first year of king James's reign: about Bartholomew-tide, my lady the duchess went to London with Germaine, Nell Gwin, and some others, and we did not expect them to come home that night, but she did, and after they went to supper, after that they went to cards; and then my lady duchess had a great mind to go to bed, and bid us to make her a fire, and so we did; and my lady went to bed, and said, Though the king and queen should send for me, I would not rise till 11 o'clock to-morrow morning. So the candles were put out, and two footmen stood to wait because Mr. Germaine used to be generous to the servants; and they waited until two o'clock in the morning. I asked them whether Mr. Germaine had come down? and they said, No, for they had been there all the while; and if he came, he could not go, for they said, We have laid chairs and stools in the way, that if he come, he might fall over them; and the next morning I saw a man with a paper-box in his hand, and he asked me for Mr. Germaine's chamber, or lodgings; I told him I knew none he had there. My lord, the next day my lady duchess ordered me to make her a fire, and Mrs. Knifeton was combing her head, and Nell Gwin came in, and said, Good morrow to your grace; how did you rest last night? she said, very well. Then colonel Cornwall came in, and said to my lady duchess, How doth Mr. Germaine do? And she

said, Why do you ask me? And col. Cornwall said, He did not lie at home last night. Then Nell Gwin said, We shall see him come out by and-bye like a drowned mouse. And so I went to make my lady duchess's bed, and found a handkerchief and ruffles. And Mrs. Knifeton came and said, Come hither, and I will shew you a sight: and when I came there lay a shirt and waistcoat, and I took them away, because it was a place where any body, as they came, might see them. And my lord duke was not in town.

Att. Gen. How came you to take notice of the ruffles and handkerchief?

A. Bens. Why, Mrs. Knifeton said it was a man's ruffles.

Sir T. Powis. How long was this since? In 1685? Had there not been an appeal?

A. Bens. Yes, there was.

Serj. Birch. Was there any thing remarkable in the bed?—*A. Bens.* The bed was stained.

Sir T. Powis. What is your name now, Benskin?—*A. Bens.* Yes.

Sir T. Powis. What was your name?

A. Bens. Burton.

Sir T. Powis. Was you ever married?

A. Bens. Sir, you know I could have no other name if I were not married.

Sir T. Powis. You have lived in several places.—*A. Bens.* I have lived with my lord of Clare, and my lord Ferrers.

Serj. Birch. Did Germaine go by any other name than he goeth by now?

A. Bens. Not as I know of.

Att. Gen. My lord, we will call another witness. Thomas Hudson, do you know the duchess of Norfolk and Mr. Germaine?

Hudson. Yes.

Att. Gen. Pray what did you observe betwixt the duchess of Norfolk and Germaine?

Hudson. Sir, I was a servant to Mr. Scroggs that was the duchess's steward, and so he going away upon other business, I was left butler at Windsor, and there came two captains to play at cards; one captain asked if Mr. Germaine was there? I told him, no. Now his man, as I heard after, had brought Germaine a shirt and waistcoat, for as soon as his man was gone, we found the waistcoat and foul shirt: and the same day the duchess treated the queen at Windsor.

L. C. J. When was this?

Hudson. It was in the year 1685.

Sir T. Powis. Was this in the year 1685?

Hudson. Yes, it was so, for I took it down in my book.

Mr. Jones. Did you swear all this before the House of Lords?

Hudson. Yes; but only the day of the month I could not well remember then: but I refreshed my memory since.

Serj. Thomp. We will call Mrs. Hastings and Elizabeth Knave. Mrs. Frances Hastings, Do you know the duchess of Norfolk, or Mr. Germaine?

Mrs. Hastings. I knew nothing of them, but that they lay at my house.

Att. Gen. Did you know Mr. Germaine?

Mrs. Hastings. I saw him but once.

Att. Gen. Did you ever see Mr. Germaine lie at your house?—Hastings. Yes.

Att. Gen. When?

Hastings. The first year of king James's reign.

Att. Gen. How long?

Mrs. Hastings. A whole summer.

Att. Gen. We will call another witness. Elizabeth Knave, did you ever live with Mrs. Hastings?—Elizabeth Knave. yes.

Att. Gen. How long?

Eliz. Knave. A whole summer.

Att. Gen. Did you ever see the Duchess of Norfolk?—Eliz. Knave. Never.

Att. Gen. Did you ever see the duchess of Norfolk and Mr. Germaine together?

Eliz. Knave. No, but Mr. Germaine's servantsaid it was the duchess of Norfolk that was with Mr. Germaine; and as he and I were making the bed, I found a handkerchief, marked with an M, and a coronet.

Att. Gen. In whose bed was this?

Eliz. Knave. Why, it was in Mr. Germaine's bed.

L. C. J. How long since?

Eliz. Knave. In the first year of king James's reign.

L. C. J. Woman, did you find the handkerchief?—Eliz. Knave. Yes, my lord.

L. C. J. What mark had it?

Eliz. Knave. An M and coronet.

Serj. Thompson. You see how far we are gone.

L. C. J. All without the statute.

Serj. Thompson. We shall shew your lordship, and the gentlemen of the jury, that my lady duchess went by the name of my lady Bateman, and Mr. Germaine went by the name of her brother; and that he did take a house at Vaux-hall, over the water; the man's name was Scriber, and she lived in that place for threequarters of a year and more; and then Mr. Germaine came constantly to her: and it was known to be the duchess of Norfolk, though she went by another name, and her servant, Henry Reyner, also: This Reyner was he, that the first witness swore gave him a key to her chamber at Whitehall.

[Henry Reyner did not appear.]

Att. Gen. Peter Scriber, pray do you know one Mr. Germaine?—Scriber. Yes, Sir.

Att. Gen. Pray, did he come to take any house of you?—Scriber. Yes, Sir.

Att. Gen. How long since?

Scriber. About two years since.

Att. Gen. Who did he take it for?

Scriber. He told me for a couple of ladies that came from Holland, as he told me.

Att. Gen. By what name went they?

Scriber. One by the name of Mrs. Bryan, another's name was madam Bateman.

Att. Gen. Did you know any gentleman, called Mr. Germaine, that lived near the Cock Pit?

Scriber. Indeed, Sir, I know not where

he lived: I have seen one walk in the garden, that went by the name of the lady Bateman's brother.

L. C. J. Where is your house?

Scriber. At Vauxhall.

L. C. J. Who paid you the rent?

Scriber. One half year, my lord, was paid by my lady Bateman.

L. C. J. What servants had she?

Scriber. She had one that went by the name of Goodman.

Att. Gen. We will call another witness. Thomas Lloyd, Do you know the lady Bateman and Mr. Germaine?—Lloyd. Yes, Sir.

Att. Gen. How often have you seen Mr. John Germaine at Vauxhall?—Lloyd. Often.

Att. Gen. Who was this lady Bateman?

Lloyd. The duchess of Norfolk.

Att. Gen. How do you know that?

Lloyd. Because I have seen her coming out of the House of Lords; and they said it was the duchess of Norfolk.

Att. Gen. Are you sure of that?

Lloyd. Yes, Sir.

Att. Gen. Did you know one Goodman?

Lloyd. Yes, Sir.

Att. Gen. What is he?

Lloyd. I know not, but I heard after, his name was Reyner; but when he waited on the lady Bateman, he went by the name of Goodman. Before Michaelmas last was twelve month, I saw Mr. Germaine that summer walking with the lady Bateman.

Sir W. Williams. You say you saw Mr. Germaine walking that summer with the lady Bateman. What summer was that?

Lloyd. Yes, that summer was twelvemonth.

Sir W. Williams. Are you sure it was within two or three years?

Lloyd. Yes, that I am sure it was.

Sir W. Williams. Was it the beginning or ending of the summer?

Lloyd. It was about the heighth of summer.

Att. Gen. We will call other witnesses; one Robert Hemingway. Where do you live?—Hemingway. At Vauxhall.

Att. Gen. Do you know one that went by the name of the lady Bateman?

Hemingway. Yes.

Att. Gen. And you are sure that she went by the name of the lady Bateman: Is she duchess of Norfolk?—Hemingway. Yes.

Att. Gen. Do you know one Goodman, that waited upon the lady Bateman?

Hemingway. Yes.

Att. Gen. Was that his right name?

Hemingway. No, his name was Reyner.

L. C. J. Where did you see her?

Hemingway. Near her father's house, my lord Peterborough's.

L. C. J. Why, how did you know this was the duchess of Norfolk?

Hemingway. Why all that ever I knew said she was so.

Att. Gen. Where did you see the duchess of Norfolk?

Hemingway. I have seen her in the house, and out of the house of lord Peterborough.

L. C. J. What occasion had you to observe her?

Hemingway. I have seen her at her father's house by the Millbank.

Att. Gen. He was a gardener employed there. We will call another witness. Andrew Anderson, do you know the duchess of Norfolk?

Anderson. Never otherwise, but by the name of the lady Bateman.

Att. Gen. Do you know a lady that went by the name of the lady Bateman?

Anderson. Yes.

Att. Gen. Do you know one Mr. Germaine?

Anderson. I never knew his name; but he went by the name of my lady's brother: I have carried him oft-times by water to Vauxhall.

Att. Gen. Have you carried that gentleman that lived next door to the Cock-pit by water to Vauxhall?—*Anderson.* Yes.

Att. Gen. What name did he go by?

Anderson. By the name of my lady's brother.

Att. Gen. What is his name? or what name doth he go by now?

Anderson. You know very well.

Att. Gen. Have you carried any wood from Vauxhall to the Cock-pit?—*Anderson.* Yes.

Att. Gen. From whence?

Anderson. From my lady Bateman.

L. C. J. When you did carry him by water, where did you take him up?

Anderson. Sometimes, my lord, at Channel-Row, sometimes at one place, and sometimes at another.

Att. Gen. My lord, he saith, he carried from Vauxhall some wood, and it came over, and it was carried to the Cock-pit.

L. C. J. When you saw him then, by what name did he go by?

Anderson. I never knew him then but by the name of my lady's brother.

L. C. J. What name goeth he now by?

Anderson. Germaine: all that know his name know it to be Germaine.

Att. Gen. Did you know one that went by the name of Goodman, that lived at Vauxhall with this lady Bateman?

Anderson. I knew not but that was his right name then; but now I hear his right name is Reyner.

L. C. J. When you did carry him by water, where did you carry him?

Anderson. My lord, sometimes to one place, and sometimes to another, as I am commanded: I must observe.

Att. Gen. My lord, we will prove that the duchess hath been several times with Germaine at the Cock-pit, and that Germaine hath gotten a private door into the Cock-pit yard, and so into the Park, for which he pays forty shillings per annum.

Att. Gen. Mr. Bradbury, where do you live?

Bradbury. I live next door to Mr. Germaine's.

Att. Gen. Where is that?

Bradbury. By the Park wall, next door to the Cock-pit.

Att. Gen. Tell my lord, and the gentlemen of the jury, how it was he had a door.

Bradbury. Why, Mr. Germaine had no way where he could go into the Park, so he spake to my man, that he might have a privilege to go through my door into the Park; so I ordered my man to give him, or his servants, passage. About a year after, he sent a workman to me, that he might make a door out into the Park, and I did agree with him for a buck, or forty shillings in money, which he pleased; and so a door was made; but since he hath gotten a door himself into the Park.

Att. Gen. John Dagley, pray give an account of what you know of the duchess of Norfolk, and Mr. Germaine?

John Dagley. I was at work there, and I saw a gentlewoman going to and fro, up and down stairs, and I asked, who that was? And I was told it was the duchess of Norfolk.—There was a brave curious bed, and I was saying to some of the house, that it was a very fine bed; and asking what it might be worth, they said it cost seven hundred pounds: and I was then just married; said I (I have a mind to bring my wife hither, and give her a *flurt* upon it); and we laid all our heads together as if we were settling the nation; and then they said, that bed was for the duchess of Norfolk; and I saw a person there, who they said was the duchess of Norfolk.

Serj. Birch. Richard Owen, do you know Mr. Germaine at the Cock-pit?—*Owen.* Yes.

Att. Gen. What company have you seen with him?

Owen. Why, I saw a lady in a mask I may say a hundred times.

Att. Gen. How often?

Owen. I may say a hundred times in a mask, looking about: another time, I saw my lord duke of Norfolk walking among the trees in the Park, and this lady looking out of the window towards him, in Mr. Germaine's house: this I have seen; I speak what I know.

Att. Gen. Jane Wadsworth, come, tell my lord and the jury what you know; speak out: do you know Mr. Germaine?

Wadsworth. Yes.

Att. Gen. Where liveth he?

Wadsworth. In Park-street, near the Royal Cock-pit.

Att. Gen. Have you ever seen the duchess of Norfolk at Germaine's house?

Wadsworth. Yes.

Att. Gen. Upon what occasion?

Wadsworth. I living next door, going in for a pint pot, with the Dutchwoman that belonged to the house, and asking her for it, she said, there's never a pint pot here; it was above stairs, and bid me go up and fetch it, and so I did; and I met the duchess of Norfolk there, she had a night-gown on, and Flanders-lace, but in night-linnen.

Att. Gen. Was she undressed?

Wadsworth. Undressed, as one may think; she might have a petticoat on.

L. C. J. What occasion had you to go there?

Wadsworth. For a pint pot, my lord, and going up, I saw the duchess of Norfolk going from one room to another: And, my lord, another time, I saw the duchess of Norfolk and Mr. Germaine in a coach together.

Att. Gen. When was that?

Wadsworth. It was in March last; and when I saw the coachman, I asked him who it was that he sat down out of the coach; and he said, an honest gentleman, that gave him two shillings for the carrying him from the Horse-ferry.

Att. Gen. Have you ever seen Mr. Germaine at the duchess's house?

Wadsworth. I did disguise myself, and followed him to see where he would go; and I did see him go into the duchess's house at Mill-bank.

Att. Gen. When was this?

Wadsworth. In May last.

L. C. J. What time of the day?

Wadsworth. My lord, at nine of the clock at night.

Sir Tho. Powis. When you say you went for the pint pot, did you ever say any thing to any body of it, that you had seen the duchess of Norfolk?

Wadsworth. Yes, to one Harman, that I had seen the duchess of Norfolk. How, said he, if my master had seen you to go up stairs, he would have killed the Dutch woman.

L. C. J. Do you know my lady duchess well?

Wadsworth. Yes, my lord, I know her well; she had Flanders horses stood in my stable, when I kept the Bear-Inn, and she came often to see them; I know her very well.

Serj. Birch. Anne Read, do you know Mr. Germaine's house?—*Anne Read.* Yes.

Serj. Birch. Where is it?

Anne Read. By the Cockpit.

Serj. Birch. Do you know him?

Anne Read. Yes.

Serj. Birch. What company have you seen go there?

Anne Read. In April last I saw a chair go by, and some persons said, That was the duchess of Norfolk, and so I went and saw her in the chair twice.

Serj. Birch. Did you see her with her mask off?

Anne Read. I saw her with her mask off, and saw her set down at Mr. Germaine's house, and go in a-doors, the door being immediately opened for her.

L. C. J. Did you know the duchess before?

Anne Read. Yes, my lord.

L. C. J. Did you see her before this time?

Anne Read. Yes, my lord.

L. C. J. What time of the day was this?

Anne Read. Between two and three o'clock.

Att. Gen. You say you saw her with her mask off, and set down at Germaine's house, and the door was immediately opened?

Anne Read. Yes, my lord.

Att. Gen. Now we will call another witness, one Thomas Foster. Do you know the duchess of Norfolk?—*Thomas Foster.* Yes.

Att. Gen. How did you come to know her?

Foster. I drove her often in a coach with Mr. Germaine.

Att. Gen. How long since?

Foster. About this time four years.

Att. Gen. Where did you use to carry them?

Foster. Sometimes into Lombard-street, sometimes to one place, and sometimes to another; and I looked back, and saw them with their heads laid together.

Att. Gen. Are you sure it was the duchess of Norfolk?

Foster. Yes, Sir, I knew her before she was married, and I knew her after.

Sir Thomas Powis. Did you see them with their heads together?—*Foster.* Yes.

Sir T. Powis. When you was on the coach-box, you say you saw them?—*Foster.* Yes.

L. C. J. Did you look back to see them?

Foster. Yes, my lord, and their heads were laid together.

Serj. Tremaine. Where do you live now?

Foster. With the duke of Norfolk.

Att. Gen. We will call another witness. Mr. Bowtel, pray do you know Mr. Germaine?

Bowtel. Yes.

Att. Gen. Do you know the duchess of Norfolk?—*Bowtel.* Yes, Sir.

Att. Gen. Have you seen her?

Bowtel. Yes; I saw her come out of Mr. Germaine's house, in a chair, into St. James's Park.

Att. Gen. Was it the duchess of Norfolk?

Bowtel. Yes.

Att. Gen. Did you know her before?

Bowtel. Yes, Sir.

Att. Gen. Had you full sight of her?

Bowtel. Yes, Sir.

Att. Gen. What apparel was she in?

Bowtel. In man's apparel, a blue coat and peruke.

L. C. J. How long have you known the duchess of Norfolk?

Bowtel. These eight or ten years.

Serj. Tremaine. Do you believe it was the duchess of Norfolk?

Bowtel. I do verily believe it.

Serj. Tremaine. Do you take it upon your oath?

Bowtel. I do verily believe it: The duchess being in a chair, the maid came running out of Germaine's house after her with a hand-basket.

Att. Gen. When was this?

Bowtel. In April last.

L. C. J. Are you sure it was the duchess's maid?

Bowtel. She gave in evidence as so in the House of Lords.

Att. Gen. What is her name?

Bowtel. Frances Knight, and she had a hand-basket in her hand.

Att. Gen. What did you observe in the hand-basket in her hand?

Bowtel. I suppose there was cloaths, for I saw the tip of a coat, or gown, hang out.

Att. Gen. My lord, we have brought this down so far—

L. C. J. Why, all is not within the statute. I must direct the jury.

Att. Gen. We have told you when it began. However, we will call another witness.

Serj. Thompson. Mary Hall, do you know Mr. Germaine?—*Mary Hall.* Yes, Sir.

Serj. Thompson. Do you know where he lives?

Mary Hall. Yes, at the Royal Cockpit, in Park-street.

Serj. Thompson. Did you ever see the duchess of Norfolk in your life-time?

Mary Hall. I cannot tell whether I did or not, for I do not know her, so I cannot tell when I do see her.

Sir W. Williams. They have called about 19 witnesses; for the first five we pass over them, for they did not speak one word of any thing since 86; and for the other, they have not proved any one act in the time of the declaration betwixt Mr. Germaine and the duchess of Norfolk: they have not proved any thing that hath any tendency to it: they have not given any manner of evidence: if there be any thing that hath any tendency, it is that which *Jane Wadsworth* saith: and what is it that she saith? why, she being a woman that sold ale, she had let a pint pot go to Mr. Germaine's house, so she went for it; and the Dutchwoman that lived there, directed her to go up the stairs for the pint pot. She sweareth, that she saw the duchess of Norfolk, and she had a petticoat on; and this is the evidence that she hath given. She doth not pretend that Mr. Germaine was in the house, or in company with the duchess; and she appeareth to be a stranger in the house, and yet she must run up stairs. As for her reputation, she is one of the vilest of women. She would say something in March or May last, but there is no act proved by her; and she is a vile and incredible witness, we shall call witnesses to shew it.

Sir Tho. Powis. My lord, for this woman *Wadsworth*, we will not only call the person she spoke to of this, that will contradict her, and tell what she did say, but go to her credit and reputation. So that now, my lord, I believe, upon the whole matter, we cannot do the duke of Norfolk more honour, than to acquit the defendant; for it will be more honour to the duke of Norfolk to have the defendant acquitted, than satisfaction to him by giving him any damages whatsoever.

Sir W. Williams. We will now call our witness, *Grace Cook*. Do you know *Jane Wadsworth*?—*Grace Cook.* Yes, Sir.

Sir W. Williams. Tell my lord, and the jury, what discourse you and *Jane Wadsworth* have had together.

Grace. I will. She and I had some talk together; and she then said, I could do them no good, for I was mistaken.

Sir W. Williams. When did she tell you this? During the sitting of the parliament?

Grace. Yes: she came in and said, I can do them no good; for, said she, I did go into Mr. Germaine's house, and thought I had seen the duchess of Norfolk, but now I see I am mistaken.

Sir W. Williams. You are a near neighbour to her?—*Grace.* Yes, Sir.

Sir W. Williams. What is her reputation?

Grace. I cannot say any thing to her reputation.

Sir W. Williams. Who was by?

Grace. There was another woman.

Jane Wadsworth. I had a subpoena, and as I was going to Mr. Germaine's house, there was one of his servants; and I had like to have been knocked down: and there was one Hall; what, said he, you are to go to be witness? what, you will swear that the duchess lay with Mr. Germaine? And another said, I deserved to be at Bridewell.

L. C. J. Who was it that told you that you deserved to be at Bridewell?

Jane Wadsworth. Hosea, his footman. My lord, it was not a fortnight since I was robbed: and it is not a fortnight since there came in persons, and threatened me, and said what they would do to me. It is not two months since, that a person or two did beat me, and had like to have knocked me down; and they ran into this woman's house (*Grace Cook's*).

Serj. Thompson. You are asked, If those persons that had like to have knocked you down, did not run into Mrs. Cook's house?

Jane Wadsworth. Yes.

Cryer. Call Hall.

Serj. Tremaine. The question is, whether what Mrs. Wadsworth swore was true?

Hall. She said she happened to go for a pint-pot to Mr. Germaine's house, and going up the stairs for it, I thought I had seen the duchess of Norfolk then there, but I saw it was not she: and one Hosea Grimsley asked if she was sure if what she said was true? She said she would not say it for the world.

Att. Gen. What trade are you?

Hall. A joiner.

Att. Gen. Are you employed by Mr. Germaine?—*Hall.* Yes.

Att. Gen. How long since?

Hall. Why ever since king William was crowned.

Att. Gen. Have you been ever since employed by him?

Hall. No; by times I have been.

Att. Gen. Upon your oath, who did you hear this lady was, that used to come to Germaine's house?

Serj. Levinz. By the oath you have taken, did not you hear it was reported it was the duchess of Norfolk?

Hall. Yes, Sir.

Serj. Birch. Did you not whisper daily in the ear, and say, That you believed her to be the duchess of Norfolk?

Hall. I cannot remember.

Serj. Pemberton. Was that woman in such a condition as she saith she was?

Hall. No; I think that she was in as good condition as she is now.

Serj. Thompson. That could not be, she was fain to be carried in a chair to the house of lords.

Serj. Tremain. Tell my lord and the jury, what you heard Foster, the duke of Norfolk's coachman, say of Mr. Germaine?

Hall. Why, he said Mr. Germaine had done very ill in turning him off in Ireland, and he would be revenged of him.

— Call Foster.

Foster. My lord, Mr. Hall and I were speaking something of the duke and duchess of Norfolk: then I said to him, that Mr. Germaine had done very ill by me, in turning me off in Ireland, but I did not say I would be revenged of him.

Hall. I happened to go to Spring Garden, I saw Thomas Foster carrying water to the horses that were in the stable; and after he and I had spoke to one another; What, says he, will not you make me drink this morning? I told him I did not care if I did, and so we went to drink. Now, said I to him, Thomas, are not you a fine fellow to abuse so good a master, that would give you money when you wanted it? Are not you sorry for it? Yes, but it is too late: But the devil, I think, had possessed me. And he said he was gotten drunk, and when a man is drunk, he will say any thing: And, said he, I remember not a word I said: And said he, I hope my master will pardon me: And he said, that some were promised good employments in the duke's service, but none had gotten any but one, and that is the house-keeper: And he said, she had better be a house-keeper in hell.

L. C. J. Did he say he had wronged Mr. Germaine?

Hall. Yes, he did, and said he was drunk.

L. C. J. He was not drunk when he was in the House of Lords. He said he was sorry that he had wronged his master, and he hoped that he would pardon him.

Serj. Trem. We will call Alexander Harman. Did you ever see that woman, Jane Wadsworth, in Mr. Germaine's house?

A. Harman. No, Sir.

Jane Wadsworth. Pray, my lord, give me leave, and I will tell you how it was, Alexander Harman came into my house, and I told him I had seen the duchess of Norfolk at Germaine's house: I told him I wanted a pint pot that I had sent to Germaine's house; and going thither, asking the Dutchwoman for it, she bid me go up the stairs for it; and so I did, and then I saw the duchess of Norfolk. Said he to me, you should not have gone up the stairs for it; for if my master should know it, he would have killed the Dutchwoman.

Sir W. Williams. We will call another witness. Margaret Condry, What did you hear this woman Jane Wadsworth say?

M. Condry. She came to Mr. Cook's with a paper in her hand, and, said she, I thought I had seen the duchess of Norfolk at Mr. Ger-

maine's house; but now she said she is better satisfied, that she never did see her there.

Sir W. Williams. Did she complain she was beaten and bruised?

M. Condry. Not as I know of.

Serj. Trem. She and others were examined in the Lords House, and the Lords would not believe them.

L. C. J. We do not know what the Lords did believe, or disbelieve, they were examined so far as to enable them to make a law; we must now hear what the witnesses say.

Sir W. Williams. We will call another witness. Frances Knight, pray, was you ever at Mr. Germaine's house?

F. Knight. No, my lord.

L. C. J. The woman said she talked with you there.

F. Knight. She will not say so to my face.

L. C. J. Did you ever carry a letter from the duchess to Mr. Germaine's, or to any person in his house?—*F. Knight.* No, my lord.

L. C. J. Mr. Bowtell saith, that he saw the duchess and this maid. Was not you there in the summer?—*F. Knight.* Never.

L. C. J. Never carried a basket?

F. Knight. Never.

L. C. J. Did you ever go with a chair?

F. Knight. No.

L. C. J. Call Mr. Bowtell again. Is this the maid that had the basket of clothes?

Bowtell. Yes, I supposed them to be clothes.

Att. Gen. Did she come out of the house when the chair came?

Bowtell. The chair came first out, and she followed it presently; and then I was near her, and knew her face.

Att. Gen. Is this the duchess's servant?

Bowtell. Yes, Sir; it is the same that followed the chair. She was the duchess's servant, I saw her then.

Att. Gen. When was this?

Bowtell. In April last.

Att. Gen. F. Knight, was you not (upon your oath) in Germaine's house in April last?

F. Knight. I broke my leg then.

Att. Gen. How long ago was it you broke your leg?—*F. Knight.* It was two years.

Sir W. Williams. Was you in April last in Germaine's house?—*F. Knight.* No, Sir.

Sir T. Powis. Was this in open day?

Bowtell. Sun was about half an hour high.

Sir T. Powis. We will call another witness, one Mary Pennington. Do you know one Jane Wadsworth? Was she your servant?

M. Pennington. She was, and pretended to be sick; and as I was informed afterwards she was not: For there was a man that gave physic, and I bid him go and look upon my maid, and he did so, and came to me and said, your maid may be sullen, but she is not sick; and coming to her, I found her sullen. And afterwards I met her out of my house; said I, Jane, What do you do here? She made some excuse, and said, she was not well. I told her I would take care of her: And how that they did not deserve servants that would not take

care of them when they were ill. I saw her muffled, and her coats trussed up; I walked after her, and, said I, Jane, whither art thou a going? and bid her let me see what she had in her coats; and I thought it was good to have witness. I spake to one, and, said I, Gaffer Hall, come hither; do you take notice that this linnen is all mine. A good while after, I saw this Jane Wadsworth standing at Mr. Bird's, said I, she was my servant several years ago; and my lord, this happened when the difference was betwixt the duke and duchess; for they said, she was a grievous witness against the duchess. Upon this, Mr. Tobson, my lord Peterborough's servant, sent for me. Then I came to be a witness.

Serj. Thompson. How came she to you first of all?

M. Pennington. She was recommended to me first; and she being minded to go away soon after she came, I said, Jane, if you will go, go: And then I observing when she went away, her clothes to be trussed up, I walked after her into Dean's yard: I said to her, Jane, what have you in your coats? and there I found my linnen.

Counsel for the Def. We will call another witness, Mrs. Pennington's maid.

Maid. I saw the linnen that my mistress took from her, as she said.

Att. Gen. Did you see any?—*Maid.* Yes.

Counsel for the Def. We will call the defendant's man William. How long was your master in Flanders?—*Will.* A month.

Counsel for the Def. Was you and your master with the king in Ireland?

Will. Yes; I went with him, and came back again with him.

Sir W. Williams. It is said he was in Vauxhall about three years since.

Will. We were out of the kingdom four months.

Sir T. Powis. There is no material evidence but what this woman is. Now we will call another witness. Mr. Welborne, pray tell my lord, and the jury, what discourse you have had with the duke of Norfolk concerning his duchess.

Welborne. My lord, about the middle of December last, my lord duke was pleased to send for me to come to him; and so I came to Mr. Negus, and he carried me into the duke of Norfolk's own room. Said he, there are some treaties betwixt me and my wife; sir Robert Clayton and sir Robert Howard are concerned in them. There is one thing that I find, my wife is setting up to have a great equipage; this I do not like. I hear, said he, she is about to have a coach, horses, and two or three footmen: and this is not all, there is Castle Rising that my wife hath a pretension to, and Billing: now if she will part with her pretensions in them, I shall take it well, and it may be for our good, and we may be reconciled. I know Drayton is a seat that she hath a kindness for: pray tell my wife of it, and let her consider of it; if she be willing to comply with me in this,

I shall comply with her in that. And, said he, I am told, if I bring a bill of divorce into the house of lords, it would take effect. And so I went from the duke of Norfolk to the duchess, and told her what the duke said; and my lord of Peterborough hearing of it, he was angry that I went to the duke.

Sir W. Williams. Did you acquaint the duchess, that if she would part with her pretensions in Castle-Rising and Billing, all things might be reconciled?

Welborne. I did. The bill of Divorce was lodged in the house of lords in January following. There is one thing, my lord, that the duke said, that I had forgotten: he did speak 2,500*l.*, or some other such thing, he could make of Castle-Rising and Billing.

Att. Gen. My lord, we will call some witnesses as to Mrs. Wadsworth's reputation, because they speak against it. Mr. Dagley, senior, Do you know Mrs. Wadsworth?

Dagley. Yes.

Att. Gen. What reputation is she of?

Dagley. Very good reputation.

Att. Gen. Was she ever upon the parish?

Dagley. Never in her days.

Att. Gen. Mr. Prince, pray do you know Mrs. Wadsworth?—*Prince.* Yes, Sir.

Att. Gen. What is her occupation?

Prince. A pains-taking woman.

Att. Gen. What reputation is she of?

Prince. Of good reputation.

Wadsworth. My lord, I would not live with Pennington any longer, for she kept a disorderly house.

One of the Jury. Pray, what is that she saith?

L. C. J. She saith Mrs. Pennington with whom she lived, kept a disorderly house.

Jane Wadsworth. My lord, I kept a house, and paid 60*l.* a year for the Bear-Inn; and, my lord, my husband lay sick a great while; and he having a mind to go into the country for his health, I had fifteen shillings of the Church-wardens, or Overseers; and that was all that ever I had.

Att. Gen. We will call another witness, one Emry Argus. Pray how long have you known Mrs. Wadsworth?—*Argus.* Many years.

Att. Gen. What reputation was she of?

Argus. She was always accounted an honest, laborious, pains-taking woman.

Att. Gen. Whether she did keep the Bear-Inn?—*Argus.* She did.

Att. Gen. Was she ever kept at the parish charge?—*Argus.* No.

Att. Gen. Was she ever in the poor's book?

Argus. No.

Att. Gen. We have proved by three substantial people, who all say, that she was always accounted an honest, laborious woman.

L. C. J. Do you observe what you have proved? You have proved no lascivious conversation; because you speak of that in the opening of the evidence. You have not proved any lascivious conversation within these six years.

Att. Gen. The court saith, that we have not proved the duchess to go beyond sea. We will call a witness, Mr. Negus. Pray did the duchess go over with the duke? The duke came back; did the duchess come with him?

Negus. The duchess came over again in 1686; after that, she stayed in England some time: and about the time of the revolution, then it was given out that she was gone over again.

Att. Gen. What time was it you heard that she came back?

Negus. In eighty-nine: I can inform the court, if they please; the time when my lord was sued for alimony.

A Letter was then read in court, from the Duke to the Duchess.

Serj. Thompson. This cause hath been in the house of lords: whether they believed, or not believed, was not the question; but they would have some time to make some proofs at law.

Att. Gen. For, as all unlawful conversations must have a beginning, it is necessary we should shew something of that, and the time, and that doth fortify the evidence that is given within the time.

Sol. Gen. Pray, my lord, if your lordship pleases, this is the use we make in giving in evidence some things before, to shew the fact within the six years, their frequent meeting in a lascivious manner; and we make use of that before the sixth year, to explain what use we make of it in matters done within the six years.

Serj. Tremain. I do appeal to your lordship, and all that hear me, whether within these six years they have proved any lascivious action, or any indecent action; so that this will not charge the defendant: for if the duchess will come to his house when he is not at home, he cannot help it. All the proof is without the six years, and no proof within the six years, to charge him to commit such a crime: if they had carried it down, as to have proved acts within these six years, I should have said they had done something.

L. C. J. Have you done?

Gentlemen of the Jury; You understand very well the nature of this action, and the record hath been opened to you, which was to this effect:

That the Defendant, the 1st day of April, in the second year of king James, did entice away the plaintiff's duchess, whereby he had not the benefit of her society; and that he had lascivious conversation with her, lived in adultery with her, and caused her to commit adultery.

The Defendant pleaded, That he did not commit any thing within these six years: what hath been before, is not now to be taken notice of. But the plaintiff's counsel hath given in evidence some acts before, which is not for any damage they expect, but to explain some actions that have been between them. For my part, I must declare, that these matters may be given in evidence to explain, but they are

VOL. XII.

not to be given in evidence to any other purpose.

The first witness is one Owen, and he telleth you, that he was sent to Whitehall, and he saith, that he went into the lodgings there, and then he did see the duchess and Germaine in bed together.

Then there is another witness proves it at another time and place, that is, Margaret Ellwood, and she telleth you in what manner she found the duchess and Germaine, and Germaine was very angry at her; and that his hat and sword lay upon the table: and you are told by her, that looking through the key-hole, she perceived them in bed; she said the curtain at the bed's feet was actually open, and she saw them in bed together, and found Germaine's handkerchief and ruffles in my lady's bed.

The next witness is one Anne Benskin, and she saith, They were in expectation of him one night at Windsor: they stayed up till two o'clock, and laid chairs and stools in his way, that if he came he might fall; but he did not come down that time: all this is about seven years ago, and out of the time mentioned in the declaration. And then after, they come and begin about the year eighty-nine, and they tell you of a lodging at Vauxhall, at one Scriber's house, for a couple of ladies, one went by the name of Bateman, and the other Brian; during that time, the man of the house knew nothing of one that went by the name of Mr. Germaine, but of my lady's brother, he had been seen walking in the garden: they tell you, they have seen the lady that went by the name of the lady Bateman, and that very lady was the duchess of Norfolk. And the waterman saith, that he hath carried him often by water, and he went by the name of my lady Bateman's brother; he hath carried him from the stairs at Channel-row to Vauxhall, where the lady Bateman lodged there; and hath carried wood from Vauxhall, by the lady Bateman's order, to the Cock-pit: and there is no manner of question but Mr. Germaine's house is at the Cock-pit. But then they come to Mrs. Wadsworth, and she is a woman that lived next door; and she had occasion to go to Germaine's house for a pint pot, and there coming, she met with a Dutchwoman, and asked her for the pint pot; she saith, she bid her go up stairs for it, which she did; and then she saw the duchess of Norfolk undressed in a morning-gown: she said, she very well knew her, she had seen her very many times, and she was sure this was the duchess of Norfolk. She telleth you, that at another time, I think it was in May last, she did see Mr. Germaine go to the Mill-bank; she was sure it was him, and she did think he would go there, and thereupon she dodged him from that very place. She said, she told one Harman that she had seen the duchess of Norfolk. How, said he, if my master had seen you, he would have killed the Dutchwoman.

Then cometh one Foster the coachman, and saith, That about four years since he had car-

ried the duchess of Norfolk and Mr. Germaine oftentimes; and one time he driving them, looking back, he saw Mr. Germaine and the duchess of Norfolk lying with their heads together. Then cometh Bowtell, and he telleth you, that in April last he saw the duchess of Norfolk come out of Germaine's house in a chair, and she was the duchess, and in man's apparel: and he said there was an old maid had a hand-basket, with some cloaths, as he believed; she followed the chair: and this was the servant of the duchess of Norfolk. Now, gentlemen, these are the witnesses that prove to you the issue in the time mentioned.

Now, gentlemen, they have called some to discredit these, they begin with Jane Wadsworth; they bring one Condry that should say, that she heard Jane Wadsworth say, That she thought at the first it was the duchess of Norfolk, but she was mistaken. Then they call some more witnesses, that is, Mrs. Penington, that was her mistress twelve years ago; and she said, that she pretended to be sick awhile after she had been with her, and so going away, she seeing her cloaths tuck'd up, went to see what was the matter; she had some of her linen: she said, she lived with her not above a fortnight, and so she parted. She saith she was indigent and poor; and her maid saith the same.

And then they bring another witness against one Foster the coachman, telling him of what he had said against Mr. Germaine: he said, he was gotten drunk, and when a man is drunk he will say any thing.

Then as to Bowtell; whereas he saith, he saw the duchess in man's apparel come out of Mr. Germaine's house, and the maid was there; and the maid cometh and saith, that she was not there, she was ill, and her leg was broke, and denieth that ever the duchess was there, or that she saw her in a chair, or in man's apparel.

Now, for Anne Read; no evidence at all is against her testimony, and she is very positive of what was done in May last.

They have called one Welborne, who saith, that the duke sent for him, and after some other discourse, spoke to him about Billing and Castle-Rising; and he saith the duke sent to him, to let the duchess know, if she would not comply with him, he did not question but to prosecute a bill of divorce in the House of Lords with effect. They tell indeed of Foster, that Germaine had turned him out of his service; that he should say, he would be revenged on him; but he denied that.

And then the duchess's letter in eighty-seven was read: I cannot see what inference you can make of it, but that the duke had no design of shewing an unkindness; you have heard the letter read, and you may make your inference as you will.

Then as to Mrs. Wadsworth; they have

brought some persons to speak to her reputation, and they tell you she is an industrious woman, and of fair conversation, and rented a house of 60*l.* per annum. As to what they alledged she was kept by the parish, it is no such thing; but her husband being sick, and about going into the country, the church-wardens helped him with about 15*s.*: that she was never in the poor's rates, or in the poor's books. And then as to Mrs. Penington, what she saith against her, she answereth thus, that why she did live no longer with her, she saith, her mistress kept a disorderly house.

The question will be, What was betwixt the duchess and the defendant within six years; if you are satisfied that there hath been any such lascivious conversation? For if so be that it was only before the six years, to what purpose was their meeting at Vauxhall, and taking a house at Vauxhall; and to what purpose the duchess came to Germaine's house? So that it is left to you, gentlemen, to consider, if there hath been unlawful conversation, and lascivious intercourse between the duchess and the defendant within these six years; if so, you are to find for the plaintiff; but if not, you are to find for the defendant.

The next morning the jury brought in their verdict into court, and being asked, Whether they found for the plaintiff, or defendant? said, for the plaintiff. Being asked what damages? They said 100 marks damages, with costs of court.* Upon which they had a severe reprimand from the court, for giving so small and scandalous a fine.

* "During this session, the town was entertained with the trial of an indecent cause in Westminster-hall. The duke of Norfolk bearing with impatience the suspected commerce which Mr. Germaine had maintained with his duchess, had the last winter lodged a bill of divorce in the House of Peers; but their lordships being unwilling to proceed in that affair, before there were some proofs of the fact made in the course of the common law, his grace did thereupon bring an action of adultery against Mr. Germaine, before the court of King's-bench. This notorious cause was tried on the 24th of November, and upon a full hearing of many obscene evidences, the jury found for the plaintiff, and allowed his grace 100 marks damages, with costs of court: where the slightness of satisfaction was almost as great a reproach as the crime itself." Kennet.

Kennet says, "The duke had lodged a bill of divorce," &c. But by the foregoing proceedings, it appears they examined witnesses, heard counsel, and then flung out the bill. However, in 1700, his Grace obtained an act of parliament for a divorce, and the duchess afterwards married sir John Germaine, bt. See the Proceedings in this Collection, A. D. 1770.

371. The Trial of CHARLES Lord MOHUN,* before the Lords at Westminster, for the Murder of William Mountford : 4 WILLIAM & MARY, A. D. 1692.

Tuesday, Jan. 31, 1692.

IN the Court erected in Westminster-hall, for the Trial of the lord Mohun for the Murder of William Mountford ;

About 12 o'clock this day, the Lords came from their own House in their robes, in procession in this manner into the court :

First, the Lord High Steward's gentlemen-attendants, two and two.

* See East's Pleas of the Crown, chap 5, s. 135, and the authorities there referred to.

This lord Mohun was again tried for murder in the year 1699. See his Case in this Collection. See, too, 1 Salk, 104 ; Skynner, 683 ; Holt, 84. 479. At length he was killed in a duel by the duke of Hamilton, who also fell. The following passages in Swift's Journal to Stella, relate to this catastrophe :

" London, Nov. 15, 1712.

" Before this comes to your hands, you will have heard of the most terrible accident that hath almost ever happened. This morning, at eight, my man brought me word, that duke Hamilton had fought with lord Mohun, and killed him, and was brought home wounded. I immediately sent him to the duke's house, in St. James's square ; but the porter could hardly answer for tears, and a great rabble was about the house. In short, they fought at seven this morning. The dog Mohun was killed on the spot ; and, while the duke was over him, Mohun shortened his sword, stabbed him in at the shoulder to the heart. The duke was helped toward the Cake-house, by the ring in Hyde-park, (where they fought) and died on the grass, before he could reach the house ; and was brought home in his coach by eight, while the poor duchess was asleep. Macartney and one Hamilton were the seconds, who fought likewise, and are both fled. I am told, that a footman of lord Mohun's stabbed duke Hamilton ; and some say Macartney did so too. Mohun gave the affront, and yet sent the challenge. I am infinitely concerned for the poor duke, who was a frank, honest, good-natured man. I loved him very well, and I think he loved me better. He had the greatest mind in the world to have me go with him to France, but durst not tell it me ; and those he did tell, said ' I could not be spared ; ' which was true. They have removed the poor duchess to a lodging in the neighbourhood, where I have been with her two hours, and am just come away. I never saw so melancholy a scene ; for indeed all reasons for real grief belong to her ; nor is it possible for any body to

Then the clerks of the House of Lords, with the two clerks of the crown in the King's-bench and Chancery, two and two.

Then the Masters in Chancery, two and two.

Then the Judges, eight of them, two and two.

Then the Peers eldest sons, and Peers minors, two and two.

Then four serjeants at arms, with their maces, two and two.

be a greater loser in all regards. She has moved my very soul. The lodging was inconvenient, and they would have removed her to another ; but I would not suffer it, because it had no room backward, and she must have been tortured with the noise of the Grub-street screamers mentioning her husband's murder in her ears."

" Nov. 16. I thought to have finished this yesterday ; but was too much disturbed. I sent a letter early this morning to lady Masham, to beg her to write some comforting words to the poor duchess. I dined to day with lady Masham at Kensington where she is, expecting these two months to lie in. She has promised me to get the queen to write to the duchess kindly on this occasion ; and to-morrow I will beg lord treasurer to visit and comfort her. I have been with her two hours again, and find her worse ; her violences not so frequent, but her melancholy more formal and settled. She has abundance of wit and spirit ; about thirty-three years old ; handsome and airy, and seldom spared any body that gave her the least provocation ; by which she had many enemies, and few friends. Lady Orkney, her sister-in-law, is come to town on this occasion ; and has been to see her, and behaved herself with great humanity. They have been always very ill together, and the poor duchess could not have patience when people told her I went often to lady Orkney's. But I am resolved to make them friends ; for the duchess is now no more the object of envy, and must learn humility from the severest master, affliction. I design to make the ministry put out a proclamation (if it can be found proper) against that villain Macartney. What shall we do with these murderers ? I cannot end this letter to night, and there is no occasion ; for I cannot send it till Tuesday, and the coroner's inquest on the duke's body is to be to-morrow ; and I shall know more."

" Nov. 17. I was to-day at noon with the duchess of Hamilton again, after I had been with lady Orkney, and charged her to be kind to her sister in affliction. The duchess told me, ' lady Orkney had been with her, and that

Then the yeoman usher of the House.

Then the Peers according to their seniority, beginning with the youngest baron, two and two.

‘ she did not treat her as gently as she ought.’ They hate one another, but I will try to patch it up. I have been drawing up a paragraph for the Post Boy, to be out to-morrow, and as malicious as possible, and very proper for Abel Roper, the printer of it.”

“Nov. 18. The committee of council is to sit this afternoon upon the affair of duke Hamilton’s murder, and I hope a proclamation will be out against Macartney. I was just now (it is now noon) with the duchess, to let her know lord treasurer will see her. She is mightily indisposed. The jury have not yet brought in their verdict upon the coroner’s inquest. We suspect Macartney stabbed the duke while he was fighting.”

In Nichols’s edition of Swift’s Works, the accounts which appeared in the Post Boy, are exhibited as follows :

“On Saturday morning last, about seven o’clock, the duke of Hamilton and the lord Mohun fought a duel in Hyde-park. His grace’s second was colonel Hamilton; and his lordship’s, major general Macartney. The lord Mohun died on the spot; and my lord duke soon after he was brought home, who received the following wounds; one, on the right side of his leg, about seven inches long; another, in his right arm; the third, in the upper part of his left breast, running downwards into his body, which was looked upon to be the immediate occasion of his death; the fourth wound was on the outside of his left leg. My lord Mohun received a very large wound in his groin; another, on the right side through his body, up to the hilt of his sword; and the third in his arm; and other wounds. Post Boy, Nov. 18.”—In the same publication, Nov. 20, was the following article, evidently written by Dr. Swift: “Major general Macartney went three times to the duke’s house with a challenge from the lord Mohun. On Friday last at four in the afternoon he delivered it to the duke, and was at the bagnio all night with my lord Mohun, who was observed to be seized with fear and trembling at that time. They met at seven the next morning, with their seconds, colonel Hamilton of the footguards for the duke, and Macartney for the lord Mohun. There the duke told Macartney, that his grace knew this was all of his contrivance, but that he should have a share in the dance; for his friend Hamilton resolved to entertain him. On Tuesday last a committee of council sat at the earl of Dartmouth’s office, and the spectators of the duel were examined; and we hear, that my lord duke and the lord Mohun did not parry, but gave thrusts at each other, and the latter shortening his sword, stabbed the duke in the upper part of his left breast, running downwards into his body,

Then four serjeants at arms, with their maces, two and two.

Then Garter king at arms, and the gentleman usher of the black rod; Garter on the

which wound, upon probing, was about fourteen inches long) who expired soon after he was put into the coach. Colonel Hamilton received a wound in his right leg, and, going afterwards to the Half-moon Tavern in Cheapside, was dressed by Mr. Woodward the surgeon. His grace is universally lamented by all men of honour and honesty, or who have the least regard for their queen and country, being a faithful subject, a true friend, a kind master, and a loving husband; and, as a just reward for his services and sufferings, was preferred to the greatest honours and employments of the crown. His grace is succeeded in honour and estates by his eldest son, who is about twelve years of age. It is to be remembered, that the lord Mohun was the person who gave the affront, which the duke, observing him to be in drink, disdained to regard. But the faction, weary of him, resolved to employ him in some real service to their cause, and valued not what became of him, provided he did their drudgery: for the dispute at law between the duke and his lordship had continued many years, without any personal quarrel of consequence. But this is the new expedient of the faction, band-boxes and bullies. Macartney is absconded; but it is hoped a proclamation will soon be issued out for apprehending him, in order to bring him to justice.—N. B. This is the fourth person that my lord Mohun had the misfortune to kill. His lordship’s title is extinct.”

At this time Swift was become a Tory, and one of the “ministers or agents of the ministry,” as they are denominated by Johnson, in number at first sixteen, afterwards more, who met weekly at each others’ houses, and were united by the name of brothers.

In the History of the Four Last Years of Queen Anne, Swift says that Macartney stabbed duke Hamilton in the breast after he was wounded by lord Mohun, and in a Note to that work, it is said, that his account is exactly agreeable to the depositions of colonel Hamilton, before a committee of the council. Macartney, it appears, escaped to Holland, but afterwards (June 16, 1716), was tried for the murder at the bar of the court of King’s-bench, and found guilty of manslaughter. Swift, in his Journal to Stella, (December, 26, 1712), relates a curious anecdote of a gentleman, who being set upon by highwayman, told them he was Macartney, “upon which they brought him to a justice of peace in hopes of a reward, and the rogues were sent to gaol.”

Burnet, after relating the fate of Hamilton, says, “I will add no character of him. I am sorry I cannot say so much good of him as I could wish; and I had too much kindness for him, to say any evil without necessity.”

right hand, and black rod on the left, carrying the white staff before the Lord High Steward.

Then his grace the marquis of Carmarthen, Lord High Steward, alone.

When the lords were seated on their proper benches, and the lord high steward upon the wool-pack, the two clerks of the crown standing before the clerks table, and the clerk of the crown in Chancery, having their majesties commission to his grace the lord high steward in his hand, they both made three reverences to his grace, and at the third coming up before the wool-pack, they did both kneel down, and the clerk of the crown in Chancery, on his knee, presented the commission to his grace, who delivered it to the clerk of the crown in the King's-Bench; and then with three reverences they returned to the clerks table, where the clerk of the crown in the King's-Bench opening the commission, commanded proclamation of silence to be made in this manner:

Clerk of the Crown. Serjeant at arms, make proclamation.—*Serjeant.* Oyez.

Clerk of the Crown. Again.

Serjeant. Oyez.

Clerk of the Crown. Again.

Serjeant. Oyez.

Clerk of the Crown. My lord high steward of England, his grace, does straitly charge and command all manner of persons to keep silence, and to hear the king and queen's majesties commission to his grace my lord high steward of England directed, openly read, upon pain of imprisonment.

Which words the serjeant at arms repeated aloud.

Lord High Steward, (Marquis of Carmarthen.) My lords, pray be pleased to stand up and be uncovered whilst their majesties commission is reading.

Which his grace himself did, and all the peers.

Clerk of the Crown reads :

‘ WILLIAM R.

‘ Gulielmus & Maria, Dei Gratia Anglie, Scotie, Francie et Hibernie Rex et Regina, fidei defensores, &c. charissimo consanguineo et consiliario nostro Thome Marchioni Carmarthen presidenti consilii nostri, salutem. Sciatis, quod cum Carolus Dominus Mohun nuper de paroch' S. Clement. Dacor. in comitat' nostro Middlesex coram dilectis et fidelibus nostris Lanceloto Johnson, arm' Carolo Lee, milit. Samuele Buck, Andrea Lawrence, Willielmo Allystrey, Thoma Harriott, Theophilo Eyton, Nich. Gryce, arm's, et aliis sociis suis justiciariis nostris ad inquirend. per Sacrament' probor' et legalium hominum de comitat' nostro Middlesex predict. ac aliis viis modis et mediis quibus melius sciverint aut poterint tam infra libertates quam extra per quos rei veritas melius sciri poterit et inquiri de quibuscunque prodictionibus misprisionibus prodictionum insurrectionibus rebellionibus contrafacturis tonsuris loturis falsis fabricationibus et aliis falsitat. monetæ hujus

regni nostr. Angl. et aliorum regnorum sive dominiorum quorumcumque ac de quibus. cunque murdris felonis homicid' interfectionibus burglariis raptibus mulierum congregationibus et conventiculis illicitis verborum prolationibus coadunationibus misprisionibus confederationibus falsis alleganciis transgressionibus riotis routis retentionibus escapiis contempt. falsitat. negligentis concealamentis manutinent. oppressionibus cambiparciis deceptionibus et aliis malefactis offensis et injuriis quibuscunque. Necnon accessariis eorundem infra comitat' predict. (tam infra libertates quam extra) per quoscunque et qualitercunque habit. fact. perpetrat. sive commiss. et per quos vel per quem cui vel quibus quand. qualiter et quomodo et de aliis articulis et circumstantiis premiss. seu eorum aliquod vel aliquem qualitercunque concernend. plenius veritat. et ad easdem prodictiones et al' premiss. audiend. et terminand. secundum legem et consuetudinem regni nostri Angl. nuper assignat. de felonia et murdro per ipsum Carolum Dominum Mohun commiss. et perpetrat. persacrum proborum et legalium hominum comitat' nostri Middlesex predict. indicat. epistit. Nos considerantes quod justitia est virtus excellens et altissimo complacens; volentesque quod predict. Carolus Dominus Mohun de et pro felonia et murdro unde ipsa ut prefertur indictat. existi coram nobis in presenti parlamento nostro secundum leges et consuetudines hujus regni nostri Angl. audiatur, examinetur sententietur et adjudicetur, ceteraque omnia quæ in hac parte pertinent debito modo exercentur et exquantur. Ac pro eo quod officium seneschall. Angl. (cujus præsentia in hac parte requiritur) ut accepimus jam vacat. Nos de fidelitate prudentia provida circumspectione et industria vestris plurimum confidentes, ordinavimus et constituimus vos ex hac causa seneschall. Angl. ad officium illud cum omnibus eidem officio in hac parte debitis et pertinent' (hac vice) gerend. occupand. et exercend. et ideo vobis mandamus quod circa premissa diligenter intendatis et omnia que in hac parte ad officium seneschall. Angl. pertinent et requiruntur (hac vice) faciatis exercetis et exequimini cum effectu. In cujus rei testimonium has literas nostras fieri fecimus patentes. Testibus nobis ipsis apud Westm. tricesimo primo die Januarii anno regni nostr. quarto.

‘ Per ipsum regem propria ‘ CHUTE.’
‘ manu signat.’

God save king William and queen Mary.

Then Proclamation was made for all persons but the peers to be uncovered.

After which, their majesties writ of Certiorari, directed to the commissioners of Oyer and Terminer for the county of Middlesex, to remove the Indictment found before them against the lord Mohun, with the return thereof, and the record of the Indictment, were read by the clerk of the crown in the King's-Bench, thus :

Clerk of the Crown. 'Gulielmus et Maria.
' Dei Gratia Angliæ, Scotiæ, Franciæ et Hiber-
' niæ Rex et Regina, fidei defensores, &c. Di-
' lectis et fidelibus nostris Lanceloto Johnson,
' Armigero, Carolo Lee, Militi, Samueli Buck,
' Andreæ Lawrence, Willielmo Allestree, Thomæ
' Harriott, Theophilo Eyton et Nicholao Grice,
' armigeris, salutem. Vobis mandamus quod
' indictamentum de feloniam et murthero unde Ca-
' rolus Dominus Mohun nuper de parochia
' sancti Clementis Dacorum in comitatu nostro
' Middlesex coram vobis in comitatu nostro
' Middlesex predict. et penes vos jam remanen.
' indictatus existit ut dicitur, cum omnibus
' illud tangentibus nobis in presenti parlamento
' nostro sub sigillis vestris vel unius vestrum
' deliberetis indilate una cum hoc brevi. Testi-
' bus nobis ipsis apud Westmonasterium vice-
' simo octavo die Januarii anno regni nostri
' quarto.'

'CHUTE.'

'Virtute istius brevis mihi et aliis directi
' indictamentum in eodem brevi mentionatum
' cum omnibus ea tangentibus domino regi et
' domine regine in presenti parlamento sub
' sigillo meo in isto brevi contenta in quadam
' schedula huic brevi annexa mitto prout in-
' terim mihi precipitur.

'Respons.

'Lanceloti Johnson, armigeri, unius justi-
' ciariorum dictorum domini regis et domine
' regine ad inquirendum, &c. infra scripti.

LA. JOHNSON.

'Middlesex ss. Memorandum quod per
' quandam inquisitionem captam pro domino
' rege et Domina regina apud Hicks-hall in
' S. John-street in comitatu Middlesex die
' Martis (scilicet) decimo septimo die Januarii
' anno regni domini et domine nostrorum Gu-
' lielmi et Mariæ Dei gratia Angliæ, Scotiæ,
' Franciæ et Hiberniæ regis et regine fidei
' defensorum, &c. quarto, coram Lanceloto
' Johnson, arm' Carolo Lee, milite, Samuele
' Buck, Andrea Lawrence, Willielmo Allestree,
' Thoma Harriott, Theophilo Eyton et Nicho-
' lao Grice, armigeris, et aliis sociis suis justi-
' ciariis dictorum domine regis et domine re-
' gine ad inquirendum per sacramentum pro-
' borum et legalium hominum comitatus Mid-
' dlesex predicti ac aliis viis modis et mediis
' quibus melius sciverint aut poterint, tam infra
' libertates quam extra per quos re veritas
' melius sciri poterit et inquire de quibuscunque
' prodicionibus misprisionibus prodicionum in-
' surrectionibus rebellionibus contrafacturis ton-
' suris falsis fabricationibus et aliis falsitatibus
' monetæ hujus regni Angliæ et aliorum reg-
' norum sive dominiorum quorumcunque ac
' de quibuscunque murtheris felonis homicidis
' et interfectionibus et aliis articulis et offensis
' in literis patentibus dictorum domini regis et
' domine regine eis et quibuscunque quatuor
' vel pluribus eorum inde directis specificatis,
' necnon necessariis eorundem infra comitatum
' predictum tam infra libertates quam extra
' per quoscunque et qualitercunque habitis
' factis perpetratis sive commissis ac de aliis

'articulis et circumstantiis premissa et eorum
' aliquod vel aliquem qualitercunque con-
' cernentibus plenius veritatem et ad easdem
' prodicionem et alia premissa audiendum et
' terminandum secundum legem et consuetu-
' dinem hujus regni Angliæ assignatis per
' sacramentum Samueli Philipps, Thomæ Head,
' Georgii Sparkes, Thomæ Lunn, Johannis
' Waterman, Willielmi Keyte, Johannis Usher,
' Willielmi Pangborne, Arthuri Alliborne, Wil-
' lielmi Deverell, Jacobi Garrison, Anthonii
' Hartley, Roberti Rogers, Thomæ Knight et
' Thomæ Long proborum et legalium hominum
' comitatus predicti ad tunc et ibidem juratorum
' et oneratorum ad inquirendum pro dicto
' domino rege et domina regina et pro corpore
' comitatus præd. presentatum existit modo et
' forma prout patet in quodam indictamento
' huic schedule annexo.

LA. JOHNSON.

'Middlesex ss. Juratores pro domino rege et
' domina regina super sacramentum suum
' presentant quod Richardus Hill nuper de
' parochia Sancti Clementis Dacorum in co-
' mitatu Middlesex Generosus et Carolus Do-
' minus Mohun nuper de parochia predicta in
' comitatu predicto Deum præ oculis suis non
' habentes sed instigatione diabolica moti et
' seducti nono die Decembris anno regni
' domini et domine nostrorum Gulielmi et
' Mariæ Dei gratia Angliæ, Scotiæ, Franciæ et
' Hiberniæ regis et regine, fidei defensorum,
' &c. quarto, vi et armis, &c. apud paro-
' chiam predictam in comitatu predicto in et
' super quandam Willielmum Mountford ge-
' nerosum in pace die et dictorum domine
' regis et domine regine nunc ad tunc et ibidem
' existentem felonice voluntarie et ex malitiis
' suis precogitatis insultum fecerunt. Et quod
' predictus Richardus Hill cum quodam gladio
' (Anglicè 'a rapier') de ferro et chalybe con-
' fecto valoris quinque solidorum quem ipse idem
' Richardus Hill in manu sua dextra ad tunc
' et ibidem extractum habuit et tenuit præ-
' fatum Willielmum Mountford in et super
' dextram partem corporis (Anglicè 'the right
' side of the body') ipsius Willielmi Mountford
' prope dextram mammillam (Anglicè 'the right
' pap') ejusdem Willielmi ad tunc et ibidem
' felonice voluntarie et ex malitia sua procogi-
' tata percussit et pupugit (Anglicè 'did strike
' and thrust') dans eidem Willielmo Mountford
' ad tunc et ibidem cum gladio extracto præ-
' dicto in et super predictam dextram partem
' corporis ipsius Willielmi Mountford prope
' dictam dextram mammillam ejusdem Wil-
' lielmi unum vulnus mortale latitudinis unius
' pollicis et profunditatis viginti pollicum, de
' quo quidem vulnere mortali predictus Wil-
' lielmus Mountford a predicto nono die De-
' cembris anno supra dicto usque decimum
' diem ejusdem mensis Decembris anno supra
' dicto apud parochiam prædictam in comitatu
' predicto languebat et languidis vixit, quo
' quidem decimo die Decembris anno supra
' dicto predictus Willielmus Mountford de
' vulnere mortali predicto apud parochiam

‘predictam in comitatu predicto obiit. Et quod predictus Carolus dominus Mohun tempore felonie et murtherie predicte per prefatum Richardum Hill modo et forma predictis felonice voluntarie et ex malitia sua precogitata factorum et perpetratorum ad tunc et ibidem felonice voluntarie et ex malitia sua precogitata fuit presens auxilians abettans confortans assistens et manutenens prefatum Richardum Hill ad predictum Willielmum Mountford in forma predicta felonice voluntarie et ex malitia sua precogitata interficiendum et murtherandum. Et sic juratores predicti super sacramentum suum predictum dicunt quod predictus Richardus Hill et Carolus dominus Mohun prefatum Willielmum Mountford modo et forma predictis felonice voluntarie et ex malitiis suis precogitatis interfecerunt et murtheraverunt contra pacem dictorum domini regis et domine regine nunc, coronam et dignitates suas, &c.’

Then his Grace removed from the wool-pack to the chair which was placed upon an ascent just before the uppermost step of the throne, and seated himself in the chair.

Cl. of Cr. Serjeant at Arms, make proclamation.

Serjeant. Oyez.

Cl. of Cr. Chief governor of the Tower of London, return the precept to you directed, together with the body of Charles lord Mohun your prisoner, forthwith into the court, upon pain and peril will fall thereon.

Then the Deputy-Governor of the Tower brought the lord Mohun to the bar, having the ax carried before him by the gentleman gaoler of the Tower, who stood with it at the bar, on the right-hand of the prisoner, turning the edge from him.

The Prisoner at his approach to the bar, made three bows, one to his grace the Lord High Steward, the other to the peers on each hand, and his grace and all the peers returned the salute to him.

Lord High Stew. My lords, my voice will not serve to speak at such a distance, so as to be heard, and therefore I must beg leave of your lordships to come down to the wool-pack again.

Lords. Ay, ay.

Then his Grace came down, and seated himself on the wool-pack.

Lord High Steward. My lord Mohun, I am to let your lordship know, you are not to hold up your hand upon your arraignment; and I am to let you that are counsel at the bar likewise know, that both you and the witnesses are to direct yourselves to the Court, in the style of ‘My Lords,’ speaking to the court.

Then there was a little pause, after which his Grace addressed himself to the prisoner thus.

Lord High Steward. My lord, you are brought here before this supreme court in order to your trial. The charge against you is, for the murder of one of the king’s subjects, which is a crime the king will at no time pass over in the meanest man’s case, without making a strict

inquiry into the offence, and causing due punishment to be inflicted on the offender.

This, my Lord, is charged upon you, not by any slight information, but by the grand inquest of this county, made up of gentlemen of good worth and consideration. It is true, that this inquest does not amount to much more than a bare accusation; and therefore it ought not to be made any use of, so as to prejudice your lordship’s trial; but it is that which is the ground of presenting this black crime before my lords your peers, who cannot receive it without some trouble, to find any one of their body suspected to be guilty of an action so dishonourable as this is represented to their lordships.

My Lord, you are a very young man, and therefore it is hoped, you cannot so early have had your hands in blood. And the same reason, because you are so young, may, perhaps, make you conceive, that you are under some greater disadvantage in making your defence, than you would be if your experience had been longer.

But to remove any misapprehension you can have of that kind, it is very proper to put your lordship in mind, that you have the good fortune now, to be tried for this fact in full parliament, where no evidence will be received, but such as must be manifest and plain, beyond all contradiction; so that you have nothing to fear here, but your own guilt.

In the next place, my Lord, you need not be discouraged for want of counsel, for the honour of this court is such, as will take care to inform you of any advantage that the law can give you. And you may be farther assured, that no art or skill in arguing can take any place here, either against your innocency, or divert my lords from doing you exact justice. Nay, I dare presume to say, on the part of my lords, that if there be room for any abatement of severity, you may reasonably expect to find it from their lordships.

These considerations, my Lord, cannot but give you great consolation under your unhappy circumstances, it being most certain, that nothing but your own crimes can hurt you.

But at the same time I must tell you, that your lordship is not to flatter yourself with an expectation or hope, that any favour will be shewed you beyond what honour and justice can allow: and I hope you have well considered, that it is no less than your life, your honour, and your estate, that you are now to defend, insomuch, that I cannot doubt but your lordship has recollected and prepared yourself for the defence of what so very much concerns you.

I will not therefore detain you any longer than to give you some directions in the Order and Method of your Trial; and those are, that your lordship do give attention carefully to the reading of your Indictment: that you give no interruption to the counsel or witnesses when they speak against you; and when the proper

time shall come for your witnesses to be examined, and that you are to be heard in your own defence, I will give you due notice of it.

Your lordship may also be certain, that when it shall come to your turn to speak, you shall be heard with all the patience and favour that the matter will bear; and at last, when all hath been heard that can be said on both sides, your lordship needs not doubt, but that my lords will give such a Judgment as will be suitable to the honour, justice and equity of this great court. Clerk, read the Indictment to my lord.

Clerk of the Crown. ' Charles lord Mohun, ' You stand indicted by the name of Charles ' lord Mohun, of the parish of St. Clement ' Danes, in the county of Middlesex, for that ' you, together with one Richard Hill of the ' same parish and county, gentleman, who is ' fled, and withdrawn from justice, not having ' the fear of God before your eyes, but being ' moved and seduced by the instigation of the ' devil, the 9th day of December, in the 4th ' year of the reign of our sovereign lord and ' lady William and Mary, by the grace of God ' of England, Scotland, France, and Ireland, ' king and queen, defenders of the faith, &c. ' with force and arms, &c. at the parish afore- ' said, in the county aforesaid, in and upon one ' William Mountford, gent. in the peace of ' God, and our said sovereign lord and lady the ' king and queen, then and there being, ' feloniously, wilfully, and of your malice ' afore-thought, did make an assault. And that ' he the said Richard Hill, with a certain rapier ' made of iron and steel, of the value of 5s. ' which he the said Richard Hill, in his right- ' hand then and there had and held drawn, the ' said William Mountford, in and upon the ' right-side of the body of him the said Wil- ' liam, then and there feloniously, wilfully, and ' of his malice aforethought, did strike and ' thrust, giving unto him the said William ' Mountford then and there, with a sword ' drawn aforesaid, in and upon the aforesaid ' right-side of the body of him the said Wil- ' liam Mountford, near the said right pap of the ' said William, one mortal wound of the ' breadth of one inch, and of the depth of ' twenty inches, of which said mortal wound ' the aforesaid William Mountford from the ' aforesaid 9th day of December, in the year ' aforesaid, unto the 10th day of the same ' month of December, in the year aforesaid, at ' the parish aforesaid, in the county aforesaid, ' did languish, and languishing, did live, on ' which said 10th day of December in the year ' aforesaid, the aforesaid William Mountford of ' the mortal wound aforesaid, at the parish ' aforesaid, in the county aforesaid, died. And ' that you the said Charles lord Mohun, at the ' time of the felony and murder aforesaid, by ' the aforesaid Richard Hill, in manner and ' form aforesaid, feloniously, wilfully, and of ' his malice afore-thought, done and com- ' mitted, then and there feloniously, wilfully, ' and of your malice afore-thought, were pre-

' sent, aiding, and abetting, comforting, assist- ' ing and maintaining the aforesaid Richard ' Hill, the said William Mountford in form ' aforesaid, feloniously, wilfully, and of his ' malice afore-thought to kill and murder. And ' so that you the said Charles lord Mohun, and ' the said Richard Hill, the said William ' Mountford in manner and form aforesaid, ' feloniously, wilfully, and of your malice afore- ' thought, did kill and murder, against the ' peace of our said sovereign lord and lady the ' king and queen, their crown and dignity.'

How say you, Charles lord Mohun, Are you guilty of this felony and murder, or not Guilty?

L. Mohun. Not Guilty, my lords.

Clerk of the Crown. How will your lordship be tried?

L. Mohun. By God and my peers.

Clerk of the Crown. God send your lordship a good deliverance.

L. High Steward. Will your lordships please that the Judges may be covered?

Lords. Ay, Ay.

Then the Judges put on their caps.

Clerk of the Crown. Serjeant at Arms, make proclamation.

Serjeant. Oyez.

Clerk of the Crown. If any one will give evidence on the behalf of our sovereign lord and lady the king and queen's majesties, against Charles lord Mohun the prisoner at the bar, let them come forth, and they shall be heard, for now he stands at the bar upon his deliverance.

L. High Steward. You gentlemen that are of the king's counsel, will you begin?

Serj. Thompson. May it please your lordships, I am of counsel for the king and queen, against my lord Mohun the prisoner at the bar, who stands indicted for the murder of one William Mountford.

L. Mohun. My lords—

L. High Steward. My lord Mohun, what does your lordship say?

L. Mohun. Do not your lordships think it proper, that I should have pen, ink and paper?

Lords. Ay, by all means.

L. High Steward. Yes, give my lord pen, ink and paper.

Which were carried to him by one of the clerks.

L. High Steward. Go on, Sir, now.

Serj. Thompson. My lord Mohun stands indicted here before your lordships, for the murder of one William Mountford, and the indictment sets forth, that one Richard Hill, who is since fled from justice, did upon the 9th of December last, make an assault upon this same William Mountford, and that the said lord Mohun did likewise make that assault. This Indictment particularly sets forth, that this Hill, by a sword or rapier, which he had in his hand, did give this William Mountford a wound on his right-side, and that Mountford

did languish of that wound till the next day, which was the 10th of December, when he died; and that at the time of the giving the wound, my lord Mohun was present, and was aiding, abetting, assisting, and comforting of Hill; and thereupon we do say, he is guilty of this murder, and for this he stands indicted. It is my duty to open the indictment to your lordships, we shall call our proofs, and give you the evidence, and then leave it to your lordships judgment.

Att. Gen. (Sir John Somers.) My lords, the Indictment has been opened, and by that your lordships see, the noble lord at the bar stands charged with the high crime of murder.

My Lords, his peerage gives him a right to be tried in this great and noble court: and as my lord has just reason to put a high value upon this privilege, so on the other hand, their majesties, who are making inquisition for the blood of one of their subjects, have a full assurance, that no compassion for my lord's youth, no consideration for his quality, or regard for one of your own order, will make your lordships unmindful of the heinous nature of the crime, or cause any variation in the steadiness of your justice.

It is true, my Lords, the difference between the trial of a peer and a commoner is very great, but there is no difference in the crime, whether committed by one or the other: it is the same law by which they must be tried and judged; and that fact which would be murder in the meanest subject, is no less than murder, if committed by the greatest peer.

My Lords, it is not insisted upon, that the noble lord at the bar gave the mortal stroke with his own hand; nor is it so alledged in the Indictment: the indictment findeth the wound to have been given by the hand of Richard Hill; but if my lord the prisoner was of his party, if he concurred with him in the thing, if he was present and abetting to the fact, though he did not strike a stroke, though he was no more than a looker-on when the thing was done; the law saith, he is a principal in the murder.

Whether my lord's case will fall within this rule, is the point for your lordships to determine, when the witnesses are heard.

My lords, it is my part to give an account of the nature of the evidence, to the end that your lordships may more easily go along with the witnesses, as they are examined, and more readily make your observations upon what they say.

This I shall do as shortly and as exactly as I can, without pretending to aggravate any thing, which I could never think did become any one in my station; and I am sure, would be to very little purpose before such a judicature as this; for after all, your lordships will found your judgments upon the fact, not as it is represented by us, but as it appears upon the oaths of the witnesses.

The time when the fact for which my lord

is to be tried was committed, was the 9th day of December last.

The occasion of it was this:

Captain Hill, the person mentioned in the Indictment, had for some time before made addresses of courtship in the way of marriage, to one Mrs. Bracegirdle, an actress in the play-house; but these proposals were totally rejected. This put Mr. Hill in a very great rage, and he declared, that Mr. Mountford (the person slain) was the only man that stood in his way, and with many execrations expressed his resolution to be revenged upon him: this he did at several times, and before several persons.

The same day the fact was committed, in the morning, my lord, who is now at the bar, and captain Hill, went together to hire a coach to go to Totteridge, and directed the coachman to have six horses ready, but to be waiting for them in Drury-Lane near the Play-house, with only two horses in his coach, about nine o'clock the same night. My lord and captain Hill dined together that day at a tavern in Covent-Garden, and here much of their discourse was about Mrs. Bracegirdle; and both of them did freely declare their opinion, that Mr. Mountford lay with her. But the principal of their discourse was in relation to a design which they had formed for the seizing upon Mrs. Bracegirdle, and forcing her into a coach, and carrying her away somewhere into the country.

This was to be executed that night; and accordingly they were then providing arms for that purpose: Mr. Hill did acquaint my lord, that the soldiers would be ready by the time; and my lord took notice, that the carrying her off would stand Mr. Hill in 50*l.* at least. Thereupon (as your lordships will hear from the evidence) Mr. Hill used this expression, If the villain resist, I will stab him; and then my lord was pleased to say, That he would stand by his friend.

After they had continued there some time, being about to part, Mr. Hill told my lord, That unless he was at the play-house by six o'clock, the thing could not be effected, and he should be undone: but my lord promised to be there at the time.

Accordingly, they both met at the play-house; and after they had been behind the scenes, and informed themselves that Mrs. Bracegirdle would not be there that night, they left the play-house.

But it seems they had got intelligence, that she was to sup that night at one Mr. Page's house in Drury-Lane; and therefore they planted themselves with their soldiers near that place, over-against my lord Craven's house.

Lord High Steward. They! Who do you mean?

Att. Gen. My lord, the prisoner at the bar, and Mr. Hill. After they had continued there for a considerable time (I think till towards nine o'clock), they began to have a jealousy,

that they might be under some misinformation; and therefore ordered the coachman to drive them into Howard-street, the place where Mrs. Bracegirdle lodged; and observing some persons walking near her lodging, they said, they doubted they were deceived, and had been betrayed.

But they soon came back again to Drury-Lane, and fixed themselves in their former station. About ten o'clock Mrs. Bracegirdle, accompanied with Mr. Page (at whose house she had been) and with her mother and (I think) her brother, going home; when they came to the place where the coach stood, with the door open, and my lord at the bar placed in the coach, and several cases of pistols by him, the soldiers, together with captain Hill, came up to Mrs. Bracegirdle, seized upon her, and would have forced her into the coach: Mr. Hill endeavoured with violence to force away Mr. Page, who was then leading her, and struck him; but Mrs. Bracegirdle's mother holding her about the middle, they could not readily get her into the coach; and during this struggle there was an opportunity given to Mr. Page to call for help; and several persons coming presently from the houses near, and the people in the street beginning to rise upon them, they found it impracticable to effect their design at that time.

Thereupon the soldiers were dismissed, but my lord and Mr. Hill would not be denied the liberty to wait upon Mrs. Bracegirdle to her lodging; and accordingly, together with Mr. Page and her mother, and other persons, they went together to Mrs. Bracegirdle's lodging, at one Mrs. Browne's house in Howard-street. Mr. Mountford's house was in Norfolk-street, below Howard-street. Howard-street is a cross street, which leads from Arundel-street, and through Norfolk-street to Surrey-street; and so it was not possible for Mountford to come to his own house, but whoever should fix themselves in Howard-street must have the opportunity of seeing him.

As they were going along, Hill swore he would be revenged; but named nobody.

After that Mrs. Bracegirdle and the company were come to her lodging, she and her mother and Page went into the house: my lord Mohun and Mr. Hill staid in Howard-street, and there continued for near two hours together, and for the most part of that time, with their swords drawn.

Mr. Mountford, as it happened, did not come home till late that night; so that their stay being long, my lord and Mr. Hill thought fit to send for wine, and had one or two bottles, which they drank in the street, near Mrs. Bracegirdle's lodgings.

During this time, they were heard to say (that is, one of them was; but which of them, by reason of the darkness we cannot tell) that if he could not be revenged that night, he would the next morning; upon which a boy, who was there with them, (but who the boy was we cannot discover)

said, Good my lord, do not do it, alter your resolution. I did observe before, that Mrs. Bracegirdle supped that night at Mr. Page's house, and Mrs. Page having heard of the great outrage and tumult in the street, and that her husband was gone home with Mrs. Bracegirdle, and being under a great concern for his safety, thought fit to follow him thither. At she entered into the house, she saw my lord Mohun and captain Hill near the door; and presently after, before she could have a full relation of what had happened in Drury-lane, Mrs. Browne, the owner of the house where Mrs. Bracegirdle lodged, came into the room, and told them, That my lord Mohun and Hill were waiting for Mr. Mountford, and that she was apprehensive it was with no good intention. Thereupon Mrs. Page thought it requisite to go to Mrs. Mountford's house to give her notice of it, and to desire her to find out where her husband was, and to caution him not to come home, unless he brought a good guard with him.

As she went out, she saw them both with their swords drawn, and she acquainted Mrs. Mountford with it, who sent to several places in search of her husband; but she was so unfortunate, that the messengers could not find him.

Whilst this was doing, the watch came into Howard-street, being alarmed at the report that two gentlemen were drinking in the street, and walking there with their naked swords. The watch demanded of my lord Mohun, why he had his sword drawn. My lord was pleased to return them this answer, That he was a peer of the realm, and bid them touch him if they durst. They then asked Hill, why his sword was out, and my lord made the excuse for him, That Hill had lost his scabbard.

The watch observing the drawer who attended upon them, and knowing that he lived at a tavern in Surrey-street, went to inform themselves, who these persons should be, that were walking in such a manner at that time of night. But they were hardly got into the house before they heard the cry of murder.

The Witnesses will inform your lordships, that as Mr. Mountford, about twelve o'clock, was coming home, my lord Mohun met him, and saluted him. Mr. Mountford said, My lord Mohun, what does your lordship do here at this time of night? and my lord made answer, He supposed Mr. Mountford had been sent for. No, no, says Mountford, I came by chance. My lord said to him again, I suppose you have heard about the lady. Mr. Mountford answered, I hope my wife has given your lordship no offence. No, says my lord Mohun, it is Mrs. Bracegirdle I mean. To this the reply of Mr. Mountford was, Mrs. Bracegirdle is no concern of mine; but I hope your lordship does not countenance any ill action of Mr. Hill.

Upon this Hill came up to them, and said to my lord, It was not a time to discourse of those matters; and as my lord continued to talk with

Mountford, Hill struck Mountford first, and, in a manner, at the same instant made a pass at him, and run him clean through the body, and this before Mr. Mountford's sword was drawn. Immediately, upon this, there was a cry of murder, and the watch came with what haste they could, and took my lord Mohun, but Hill was fled; when my lord was taken, his sword was not drawn.

As soon as my lord Mohun was taken, the first question he asked was, If Hill was apprehended? And when he was told he was not, he said he was glad of it, and he did not care if he were hanged for him. And he said, adding at the same time, That he was sorry that Mr. Hill had so little money about him, and wished him all that he had in his own pocket; and he did then also own to the watch, that he had changed coats with Mr. Hill, and had Hill's coat on him at that time.

My lord, this is the substance of the Evidence, and in this order, with your lordships leave, we shall offer the proofs to your lordships; I do not doubt, but your lordships will attend to the evidence with all care, and will determine upon it according to justice and honour. I will detain your lordships no longer, but proceed to call the witnesses to prove what I have opened.

L. H. Steward. Pray call your witnesses together, and let me know who you begin with.

Att. Gen. My lords, we do not know what place is designed for the witnesses; but if they are to be on the other side, and this crowd do interpose between us and them, it will be impossible for us, who are the king's counsel, to hear what they say, or know how to proceed.

L. H. Steward. There must be room made there for the witnesses; where are your witnesses, Mr. Attorney?

Clerk of the Crown. If you please to name them, Sir, we will call them.

Att. Gen. Call Mr. John Hudson, and Mr. George Powell,

L. H. Steward. I know not how this is ordered, but way must be made there by the bar, that the prisoner may see the witnesses, and they him.

Att. Gen. Yes, my lord, by all means.

Serj. Tremain. If your lordships please, the witnesses will be most conveniently heard, if they come and stand by us.

Att. Gen. If your lordships please, it will not be possible either for my lord at the bar, or for us, to hear what the witnesses say, unless they be brought into this place to stand between us.

L. H. Steward. My Lord Great Chamberlain, be pleased to give order for them to be brought in thither.

Then the Lord Great Chamberlain went down to the bar.

L. G. Chamberlain. The witnesses must be brought to this place.

And accordingly, way was made for the witnesses, as called, to stand at the bar between the prisoner and the king's counsel.

L. H. Steward. Give me the name of him that you begin with.

Att. Gen. We begin, my lords, with Mr. John Hudson. [Who came to the bar, and one of the clerks held the book to him, upon which he laid his hand.]

Cl. of the Cr. Hearken to your oath, Sir: The evidence that you shall give on the behalf of our sovereign lord and lady the king and queen's majesties against Charles lord Mohun, the prisoner at the bar, shall be the truth, the whole truth, and nothing but the truth: So help you God. [Then he kissed the book.]

Att. Gen. Mr. Hudson, do you give my lords an account what you know of any applications of courtship made to Mrs. Bracegirdle by Mr. Hill, and what became of it; and what you heard Hill say about her, or about any one else relating to that matter.

Hudson. My lord, I had the honour to be invited to supper with my lord Mohun, at the Rose Tavern in Covent Garden, where I found captain Hill with his lordship.

Att. Gen. When was this, Sir? Tell the time.

Hudson. This was three nights before this unfortunate accident happened; there I found captain Hill, and we supped together; and after supper, captain Hill raised a discourse of Mrs. Bracegirdle and Mr. Mountford; says he, I should not doubt the success of my amour with Mrs. Bracegirdle, if I were not obstructed by Mountford, whom I design to be the death of: this is truth, upon my oath. My lord Mohun was in the company; but I cannot say that my lord made any reply to the thing, or took any notice of it: but this captain Hill did say, not only then, but several times before.

Att. Gen. Did he say it at any other time in your hearing?

Hudson. Yes, several times before.

Att. Gen. Do you know any thing more of this matter?

Hudson. No more, than that my lord Mohun, that very night that Mr. Mountford was killed, and captain Hill, came into the Scene Room of the Play-house, and my lord Mohun had captain Hill's coat on, and captain Hill had my lord Mohun's coat on, and they changed their cloaths in the Play-house, I saw them change their cloaths; but what their design was, I cannot tell.

Att. Gen. When was that, Sir?

Hudson. That very night that the gentleman that is dead, Mr. Mountford, was killed.

Att. Gen. You say, that my lord Mohun was present when that discourse of Hill was, about Mountford at the tavern.

Hudson. Yes; but I cannot say my lord took any notice of it, for he made no reply that I heard.

L. H. Steward. Have you done with this witness?—*Att. Gen.* Yes, my lord.

Hudson. This is all that I know of the matter.

L. H. Steward. My lord Mohun, have you any thing to say to this witness?

L. Mohun. No, my lord.

Att. Gen. Then our next witness's name is George Powell. [Who was sworn in like manner.]

Att. Gen. Mr. Powell, you have heard the questions that have been asked Mr. Hudson. Pray will you make answers to them; and give my lords an account what you know of this matter.

Powell. May it please your lordships, about five or six days before Mr. Mountford was wounded, I was in company with captain Hill, and he began Mrs. Bracegirdle's health. I told him I would pledge it. Says he, I am sure there is no bar between me and Mrs. Bracegirdle but Mountford; and I am resolved to be revenged on him, one way or another. About three days afterwards I was at supper with my lord Mohun and captain Hill, and another gentleman, and the same discourse arose again, and captain Hill whispered me in the ear, says he, I am resolved to have the blood of Mountford. I told him I did not think it fit for him to speak so behind a gentleman's back, and to me, who was his friend. I said, I would acquaint Mr. Mountford what he said, and I did not doubt but he would give him the satisfaction of a gentleman for any injury he did him. I heard no further discourse at that time, nor do I know more of that matter, till the night that Mr. Mountford was wounded, when I saw him lying upon the parlour floor, and afterwards saw him laid to bed, and sat up all night with him, and about four o'clock in the morning, I asked Mr. Mountford how the thing happened. He told me captain Hill killed him basely; I asked him if his sword was drawn; Yes, says he, but it was after I had received my wound, for whilst my lord Mohun talked to me, Hill run me through.

Att. Gen. At that time, when those words were spoke at supper, That he designed to be the death of Mountford, was my lord present?

Powell. Yes, my lord Mohun was present, but he was talking to colonel Tredenham.

Att. Gen. Did my lord Mohun say any thing to what Hill said?

Powell. I did not hear him make any answer to it at all.

Att. Gen. Do you know any thing else in relation to this fact?

Powell. Nothing else, but that captain Hill did give a letter to be delivered to Mrs. Bracegirdle, but I know not whether it was delivered or not, and he often told me, he would marry her with all his heart.

Att. Gen. You say you had that discourse with Mountford, when he lay a-dying?

Powell. It was about four o'clock, and he died about one.

Att. Gen. Was there any thing said about my lord Mohun at that time?

Powell. Nothing, but that my lord Mohun was talking to him, whilst the other run him through.

L. H. Steward. If I understand you aright, you say nothing against my lord Mohun, but

his being by one time at supper when Hill said some words about Mountford; and then the other thing you say is, what Mountford told you after he was wounded, That my lord was talking to him, when Hill gave him the wound?

Powell. Yes, my lord, that is all that I heard.

L. H. Steward. Has your lordship any thing to say to this witness?

L. Mohun. No, my lord.

Att. Gen. The next witness that we shall desire to call is Mrs. Knight. [Who was sworn.]

Mrs. Knight. I have nothing to say to my lord Mohun; but what I have to say, is to Mr. Hill. About four days before Mr. Mountford was killed, Mr. Hill came to me, and spoke to me about Mrs. Bracegirdle: he told me he was satisfied she hated him. I told him I did not believe it; he said, she did love some body, but he had thought of a way to be even with that body. Upon the Wednesday night before Mr. Mountford was killed, he came to me as I was coming out of the dressing-room; saith he, Mrs. Knight, let me speak a word with you; says he, You are very great with Mrs. Bracegirdle, and I desire you to be so kind, as to speak to her for me, and I would beg of you, if you would give me leave, to give her this letter from me: No, said I, Mr. Hill, I beg your pardon; you say she hateth you, and if she hateth you, she will not love any body that speaketh for you; and I am not fond of creating myself enemies in the house, knowing I have some already. What enemies? saith Mr. Hill; Mountford do you mean? and then repeating a great oath, I shall find a way with him speedily.

L. H. Stew. A way with what?

Mrs. Knight. A way with him speedily; Hill said it of Mr. Mountford.

L. H. Stew. What do you call this witness for, Mr. Attorney? what use do you make of her evidence against my lord Mohun?

Att. Gen. My lord, the use that we would make of these witnesses, is to give an account of the whole fact, from the beginning to the end, Hill's malice, and what was the occasion of it, his design in coming there that night, and what he did, and to leave it to your lordships, to judge what influence this will have, how far it will affect my lord Mohun. The next witness is Mrs. Sandys.

L. H. Stew. What is this woman's name?

Att. Gen. Mrs. Elizabeth Sandys. [She was sworn.]

Att. Gen. Mrs. Sandys, give my lords an account, whether you were present with my lord Mohun and Mr. Hill at the tavern that day that Mr. Mountford was killed, and what passed there.

Sandys. I dined with my lord Mohun and captain Hill, at the Three Tuns in Shandois-street, and there arose a discourse about Mrs. Bracegirdle and Hill, and my lord Mohun asked me, If I thought Mountford had lay with her or no. I said I could not tell; pre-

sently after, says my lord Mohun, It will cost Hill fifty guineas this design. Saith Mr. Hill, if the villain offers to resist, I will stab him; saith my lord Mohun, I will stand by my friend. When this was done, Mr. Hill desired Mr. Brough to borrow a case of pistols of captain Leister, and he said he would not borrow them himself, for he doubted, if he knew of the design, he would not lend them. When that was done, captain Hill told me, he had a coach and six horses in Witch-street, to seize Mrs. Bracegirdle, and carry her away into the country; and my lord Mohun said he would stand by his friend: and when my lord Mohun went away, Hill said to him, My lord, if you be not there by six o'clock, I am ruined. Saith my lord Mohun, upon my word and honour I will be at the Play-house by six.

L. H. Stew. My lord Mohun, have you any thing to say to that witness?

L. Mohun. Yes, my lord, I desire to have her asked, whether she is a maid, or a married woman?

L. H. Stew. You hear the question; but I do not know what use my lord will make of it.

Att. Gen. You can easily answer, whether you are married or unmarried.

L. H. Stew. That question is very fair; are you a married woman, or a single woman?

Sandys. I am a single woman, my lord.

Att. Gen. Pray, Mrs. Sandys, repeat the words that my lord Mohun said, when Hill said, if the villain resisted, he would stab him.

Sandys. My lord Mohun said nothing in the world, but that he would stand by his friend.

L. H. Stew. Have you any further questions, Mr. Attorney, to ask this witness?

Att. Gen. I have nothing more to ask her, my lord.

L. H. Stew. What say you, my lord Mohun; would you ask her any thing else?

L. Mohun. No, my lord.

L. H. Stew. Then withdraw. [Which she did.]

Att. Gen. The next witness we call is Mr. Rogers. [Who was sworn.]

L. H. Stew. What is this witness's name?

Att. Gen. Rogers, my lord.

L. H. Stew. What is his Christian name?

Att. Gen. John. If your lordships please to remember, that the last witness, Mrs. Sandys, said, that Mr. Hill desired my lord Mohun not to fail of being at the play house by six o'clock, and that he was undone if he did not come; and my lord promised upon his word and honour that he would come: Now we call this witness to prove that they met at the play house according to the appointment on the 9th of December.

Rogers. My lord, all that I know of this matter was, That my lord Mohun and captain Hill were at the play house that night, and that which made me take particular notice of their being then at the play house, though they had been frequently there before together, was that captain Hill had my lord Mohun's

coat on, and my lord Mohun had captain Hill's coat on.

Att. Gen. Did you observe any thing else, when they were at the play house.

Rogers. Nothing but only some words that passed between captain Hill and my lord Mohun, when I went to ask them for the overplus of the money for coming in, because they came out of the pit upon the stage; he said, he would not give it me; but if I brought any of our masters, he would slit their noses, or something to that effect.

Att. Gen. What were the words he said when you asked him for money?

Rogers. I asked them for money, that they ought to pay more than the rest that were in the pit, because they came upon the stage, and they would not give it me; but he said, if I brought any of our masters, he would slit their noses, or cut their faces, or to that effect.

L. H. Stew. My lord, will your lordship ask him any questions?

L. Mohun. No, my lord.

L. H. Stew. Call another witness then.

Att. Gen. My lords, with your lordships favour, the next witness that we shall call, is the coachman, William Dixon. (Who was sworn.)

Att. Gen. Mr. Dixon, Do you remember the day when Mr. Mountford was killed?

Dixon. Yes, Sir.

Att. Gen. Pray acquaint my lords, what persons you carried in your coach that day; whether you carried my lord Mohun and Mr. Hill, and to what place, and where you waited for them.

Dixon. If it please your lordships, captain Hill and my lord Mohun came in a hackney coach to my gate, where I live, and I was just a going to set my coaches into the street for hire: They bargained with me for six horses, and I was to have thirty shillings to set them down at Totteridge, on this side Barnet. I asked them, whether they would have me bring all the six horses with the coach. No, they said, a pair would serve to the play house, and the other four should stand at the pound's end. So I went accordingly to the place appointed, over against the Horse shoe tavern in Drury lane, and a footman came, and Mr. Hill and he bid me drive down lower. So I drove to my lord of Clare's door, or thereabouts; and there was some soldiers that would have had me go in, and smoke and drink with them; I told them I did never smoke, and I did not care for drinking any thing at that time. With that my lord Mohun and Mr. Hill came into the coach, and, as they bid me, I carried them into Norfolk street, below the watch house that stood there; they bid me turn about, and stand there; and then they went to the White horse tavern; so I did turn about, and stayed as they bid me, and they tarried a pretty while before they came again, and then they bid me drive back to the place from whence I came, and so I drove into Drury lane, and they bid me stop next to my

lord Craven's house, this was about ten o'clock, and it being so late, I went home, and sent a postillion down to take care of the coach, so that what passed afterwards I cannot tell.

L. H. Stew. What day or night was all this you speak of?

Dixon. Truly, my lord, I cannot tell what day it was; it was in December, as I take it, the 9th; and it was Friday, I believe; I do not know justly.

L. H. Stew. Did you hear of the death of Mr. Mountford?—*Dixon.* Yes, I did.

L. H. Stew. Was it the same day that you heard Mr. Mountford was killed?

Dixon. No, I did not hear it till the next morning.

Att. Gen. You say, you went with my lord Mohun and Mr. Hill into Norfolk street, and there you stayed for them, whilst they went elsewhere?—*Dixon.* Yes, I did so.

Att. Gen. Do you know to what houses they went?

Dixon. They went to the White Horse tavern, to the hithermost house on this side the strand, and, they went below to a door on this side of a house that is not finished yet.

Att. Gen. Did you hear them use any expressions there?

Dixon. I heard Hill say to my lord Mohun, I think there is a man and a maid talking, it was at the corner house; saith Hill, we are betrayed; damn me, saith he, my lord, let us go and thresh him.

Att. Gen. What did they do then?

Dixon. I did see them do nothing.

Att. Gen. Whither did you carry them from thence?

Dixon. To the place from whence they came in Drury lane.

L. H. Stew. Will your lordship say any thing to this man?

L. Mohun. I desire he may be asked, whether he had not orders to go out of town with us, as soon as Mrs. Bracegirdle was put into the coach.

Dixon. If it please you, Sir, I had order thus, That when we were to go out of town, I must drive down into the Strand, and then round about any way that was readiest and clearest to get to the pound; that order I had, and no other order I had.

L. H. Stew. Who is your next witness?

Att. Gen. My lords, the next witness we shall call, will give you an account what was done in Drury lane, upon their endeavouring to carry her away, and for that we have here Mrs. Bracegirdle herself.

L. H. Stew. What is this gentlewoman's name?

Att. Gen. Mrs. Ann Bracegirdle. (Then she was sworn.)

Att. Gen. Mrs. Bracegirdle, pray give my lords an account of the whole of your knowledge of the attempt that was made upon you in Drury lane, and what followed upon it.

Mrs. Bracegirdle. My lord, I was in Prince's street at supper at Mr. Page's, and at

ten o'clock at night, Mr. Page went home with me; and coming down Drury lane, there stood a coach by my lord Craven's door, and the boot of the coach was down, and a great many men stood by it; and just as I came to the place where the coach stood, two soldiers came and pulled me from Mr. Page, and four or five more came up to them, and they knocked my mother down almost, for my mother and my brother were with me. My mother recovered, and came and hung about my neck, so that they could not get me into the coach, and Mr. Page went to call company to rescue me. Then Mr. Hill came with his sword drawn, and struck at Mr. Page and my mother; and when they could not get me into the coach because company came in, he said he would see me home, and he led me by one hand, and my mother by the other. And when we came home, he pulled Mr. Page by the sleeve, and said, Sir, I would speak with you.

Att. Gen. Pray, Mrs. Bracegirdle, did you see any body in the coach when they pulled you to it?

Mrs. Bracegirdle. Yes, my lord Mohun was in the coach; when they pulled me to the coach, I saw my lord Mohun in the coach. And when we came home, Hill pulled Mr. Page by the sleeve, and he said, he would speak with him. As they led me along Drury lane, my lord Mohun came out of the coach, and followed us, and all the soldiers followed them; but they were dismissed, and, as I said, when we came to our lodging, then Hill pulled Mr. Page by the sleeve, and said, he would speak with him. Saith Mr. Page, Mr. Hill, another time will do, to-morrow will serve; with that, when I was within doors, Mr. Page was pulled into the house, and Mr. Hill walked up and down in the street with his sword drawn. He had his sword drawn, when he came along with me.

Att. Gen. Did you observe him to say any thing whilst he was with you?

Mrs. Bracegirdle. As I was going down the hill, he said, as he led me, He would be revenged.

Att. Gen. Did he say of whom he would be revenged?

Mrs. Bracegirdle. He did not name of whom then, but when I was in the house, several persons went to the door, and afterwards Mrs. Browne went to the door, and spoke to them, and asked them, what they staid and walked there for? at last, they said, they staid to be revenged of Mr. Mountford; and then Mrs. Browne came in to me, and told me of it.

L. H. Stew. Who said that?

Mrs. Bracegirdle. Mr. Hill.

Att. Gen. Were my lord Mohun and Mr. Hill both together when that was said, that they staid to be revenged of Mr. Mountford?

Mrs. Bracegirdle. Yes, they were. And when Mrs. Browne came in and told me, I sent my brother, and the maid, and all the people we could, out of the house to Mrs.

Mountford, to desire her to send, if she knew where her husband was, to tell him of it, and she did. And when they came in a doors again, I went to the door, and the doors were shut, and I listened to hear if they were there still; and my lord Mohun and Mr. Hill were walking up and down the street; and by and by, the watch came up to them, and when the watch came, they said, Gentlemen, why do you walk with your swords drawn? Says my lord Mohun, I am a peer of England, touch me if you dare.

L. H. Stew. Repeat that again, for I could not well hear you: do you speak of what you heard from Mrs. Browne, or what you observed yourself?

Mrs. Bracegirdle. My lord, I was within doors, but I was listening at the door, and heard this myself; they came up to them, and said, Gentlemen, why do you walk with your swords drawn?

L. H. Stew. Who asked that question?

Mrs. Bracegirdle. The watch; and says my lord Mohun, I am a peer of England, touch me if you dare. Then the watch left them, and they went away, and a little after there was a cry of murder, and that is all that I know, my lord.

L. Mohun. My lord, I desire this witness may be asked, How long after this passage that she speaketh of, was it that she heard murder cried in the street.

L. H. Stew. You hear the question, Mrs. Bracegirdle; what say you to it?

Mrs. Bracegirdle. My lord, I believe it was about a quarter of an hour after, to the best of my memory.

L. H. Stew. What do you mean, a quarter of an hour after the watch asked the question?

Mrs. Bracegirdle. Yes, my lord.

[Then the Earl of Mulgrave stood up.]

L. H. Stew. My lord Mulgrave.

E. of Mulgrave. My lord, I desire to ask this witness a question. If I heard her aright, I think she said, they threatened to be revenged of Mr. Mountford, I desire to know of her, whether my lord Mohun did threaten him?

Mrs. Bracegirdle. I do not know indeed; but when Mrs. Browne asked them what they staid there for? they said, to be revenged of Mr. Mountford. I did not hear them myself, but Mrs. Browne came in and told me so.

Att. Gen. Mrs. Bracegirdle, I think, if I did not mistake, you said, when the watch came up, they asked them, why their swords were drawn?

Mrs. Bracegirdle. Yes, and my lord Mohun made answer, he was a peer of England, and bid them touch him if they durst, and they went away.

Att. Gen. My lord, the next witness that we call shall be Mr. Gawen Page, at whose house Mrs. Bracegirdle supped that night.

[He was sworn.]

Att. Gen. Mr. Page, I suppose you remember the night, when Mrs. Bracegirdle supped at your house?

Mr. Page. Yes, my lord.

Att. Gen. I pray give an account of your whole knowledge about this matter, what happened that night.

Mr. Page. About ten o'clock at night, on Friday the 9th of December last, going down Drury-lane, with Mrs. Bracegirdle, whom I led, just against my lord Craven's house—

L. H. Stew. Pray, Sir, speak out, and tell us what time it was.

Mr. Page. About ten o'clock at night, on Friday the 9th of December last, going down Drury-lane, and leading Mrs. Bracegirdle, right against my lord Craven's door stood a coach, where two soldiers pressed in between me and Mrs. Bracegirdle, and parted us: I asked what that was for? But they took hold of Mrs. Bracegirdle, and immediately they would have forced her into the coach; captain Hill, whom I saw there with his sword drawn, made several blows at me.

L. H. Stew. Who would have forced her into the coach?

Mr. Page. The soldiers would.

Att. Gen. Pray, go on, Sir, what followed after that?

Mr. Page. I say, captain Hill made several blows at me, and cried, You villain, stand. I received many of them upon my cane, but there was none that hurt me; then I got help, and they were prevented of carrying Mrs. Bracegirdle away. My lord Mohun was in the coach; I saw him in the coach.

Att. Gen. Did you see any arms in the coach?

Mr. Page. I saw no arms, but I saw a bundle in the coach; though I could not tell what it was; and there was one in the coach, that I saw was my lord Mohun. So when we had got help we went down the lane to convey her home, and captain Hill was with us, and my lord Mohun followed at a distance. Captain Hill said to the soldiers, 'Begone, I have no thing more to do with you now.' When we came to the house, and Mrs. Bracegirdle was entering in, captain Hill pulled me by the sleeve, and said he would speak with me. Said I, to-night is not a fit time, to-morrow is better, therefore pray stay till to-morrow morning. But said he, 'God damn me, you will not go home to-night.'

L. H. Stew. You speak so low, that I cannot tell what you say; I did not hear that last that you said.

Mr. Page. My lord, I say, when captain Hill pulled me by the sleeve, and said he would speak with me, I told him that night was not a fit time, to-morrow would do better: well, saith he, 'To-morrow then, but God damn me, you will not go out to night.' I went in a doors, and there my lord Mohun and he staid for an hour and a half, as I was told; I saw them not myself: but Mrs. Browne came in and said, that they said they waited to be revenged.

Att. Gen. Whom did they mean, yourself that they would be revenged of?

Mr. Page. Mrs. Browne said, they waited for Mr. Mountford.

Att. Gen. Did you continue in that house till after the murder was committed?

Mr. Page. Yes, Sir, I did.

L. H. Stew. How long after you came into the house was the fact done?

Mr. Page. About an hour and an half.

L. H. Stew. Did you yourself hear or observe any thing to be said or done, from the time you came into the house, to the time the fact was committed?

Mr. Page. No, my lord, I was in the back-room of the house.

Att. Gen. Pray, Mr. Page, did you see Mr. Mountford after he was wounded?

Mr. Page. Yes, I did.

Att. Gen. Then give my lords an account of what passed at that visit.

Mr. Page. Upon the outcry of murder, I came into the street, where I found my lord Mohun just surrendering himself to the constable; and immediately I went to Mr. Mountford's house, and I found him lying all along in his blood upon the floor; he seeing me, desired me to lift him up, which I did, and thinking he had been dying, I asked him whether he knew me. He said, Yes. Said I to him, Had you time to draw your sword in your defence? He said, 'He was barbarously run through before he could draw it.'

Att. Gen. Is this all you have to say, Sir?

Mr. Page. Yes.

L. H. Stew. Will your lordship ask this witness any questions?

L. Mohun. My lord, I desire he may be asked, whether my sword was drawn when I surrendered myself to the constable.

Mr. Page. No, my lord, your sword was in the scabbard when you surrendered yourself, but I cannot say whether your sword was drawn before or not.

Att. Gen. The next witness that we desire to call is Mrs. Page. [She was sworn.]

L. H. Stew. What is the name of this witness?

Att. Gen. Mrs. Mary Page. Pray Mrs. Page, do you remember the night when Mrs. Bracegirdle supped at your house, and Mr. Mountford was killed? Acquaint my lords with all you did observe that night.

Mrs. Page. Mrs. Bracegirdle supped at my lodging, and my husband went home with her, and staying something longer than ordinary, I sent my servant to know what was the reason of it: he brought me word back, that my husband had like to have been murdered, and Mrs. Bracegirdle carried away. With that I went down myself towards Mrs. Bracegirdle's lodgings, and there I found my lord Mohun, and Mr. Hill walking, Mr. Hill with his sword drawn, before Mrs. Bracegirdle's door, and my lord Mohun's not. So I went in, into the house; and after I had staid awhile there, Mrs. Browne came out to them, and asked them, why they staid there? They made answer, they staid for Mr. Mountford.

Att. Gen. Who made that answer?

Mrs. Page. Mr. Hill.

Att. Gen. Who was with Mr. Hill at that time?—*Mrs. Page.* My lord Mohun.

Att. Gen. Was there any body besides those two that you observed?

Mrs. Page. No, there was nobody else that I saw?

Att. Gen. Were their swords drawn?

Mrs. Page. Mr. Hill's then was, my lord Mohun's at that present was not: but Mrs. Bracegirdle hearing that they waited for Mr. Mountford, desired me to go over to Mrs. Mountford's house, and speak to her to send to her husband, and desire him to keep where he was, or come home with a good guard. Whilst I was telling Mrs. Mountford what I was desired to tell her—But I should have told your lordships, that when I came out to go to Mrs. Mountford, my lord Mohun had then his sword drawn.

Att. Gen. Were they there when you went out of Mrs. Bracegirdle's lodgings?

Mrs. Page. Yes, they were.

Att. Gen. And are you sure, that at that time when you went out of Mrs. Bracegirdle's house, my lord Mohun had his sword drawn?

Mrs. Page. I am sure of it, that when I went out, my lord Mohun had then his sword drawn; that was the second time.

L. H. Stew. Out of whose house was that you went?

Mrs. Page. Out of Mrs. Bracegirdle's lodgings.

L. H. Stew. Where were they, when you saw his sword drawn?

Mrs. Page. They were walking before Mrs. Bracegirdle's door from one end of the street to the other.

Att. Gen. What street is that?

Mrs. Page. Howard-street.

Att. Gen. Pray describe to my lords that street.

Mrs. Page. They that stand in that street, can see who goeth down to Mrs. Mountford's house, and who goeth up Surrey-street.

Att. Gen. Well, now go on.

Mrs. Page. Whilst I was desiring Mrs. Mountford to send away to her husband, I heard murder cried out; immediately I opened Mr. Mountford's door, and he came in, and fell with his arms round about my neck to support himself, I suppose; and he said Hill had murdered him. I helped him as far as the parlour door, and there down he fell. I went up the street, and called out 'murder,' and my lord Mohun came to me, and bid me take notice he had no hand in the murder, for his sword was not drawn. I told him, I could not tell that, for to my knowledge he had been in Mr. Hill's company with his naked sword just before.

Att. Gen. Call Mrs. Browne.

L. H. Stew. You have nothing to say to that witness, my lord, have you?

L. Mohun. No, my lord.

Att. Gen. Is this all you have to say, Mrs. Page?

Mrs. Page. After this, my lord Mohun resigned himself up to the constable; the constable standing by me, I bid him secure my lord Mohun, which he did.

L. Mohun. My lord, I desire to ask this witness, whether I surrendered myself, or made opposition, or offered to run away?

Mrs. Page. No, my lord, the constable laid hold on you.

L. H. Stew. What answer do you make to my lord's question?

Mrs. Page. I say, my lord, the constable laid hold upon my lord Mohun.

L. Mohun. I desire to ask her whether I did not surrender myself?

Mrs. Page. Not till I had desired the constable to secure your lordship.

L. Mohun. Did I make any opposition, or offer to run away?

Mrs. Page. No, for the constable presently took hold of your lordship.

L. Mohun. I desire she may be asked whether Hill run away.

Mrs. Page. That I know not; I suppose he was gone away out of the street before I came forth.

Att. Gen. Swear Mrs. Browne. [Which was done.]

Att. Gen. Mrs. Browne, you are upon your oath, pray declare to my lords what you know happened upon that night that Mr. Mountford was killed.

Mrs. Browne. If it please your lordships, when Mrs. Bracegirdle came home, I found her crying; I asked her what was the matter? She said, my lord Mohun and Mr. Hill had run her into a coach, with six or seven soldiers, and lifted her into the coach, and she said they were at the door. Upon which, I went to the door, and saw my lord Mohun and Mr. Hill walking along. Said I, Are you the gentlemen that have used Mrs. Bracegirdle in this manner? my lord Mohun answered; 'Madam,' said he, 'I protected her; if it had not been for me, the rabble would have torn her a pieces; for if we had a mind to carry her away, we had six or seven pistols charged in the coach, and could easily have suppressed the tumult.'

L. H. Stew. I do not hear what the witness saith, she speaketh so low.

Mrs. Browne. My lord Mohun said, they had six or seven pistols in the coach, and could easily have suppressed the rabble, if they would have carried her away; but he had no design upon her for his own part, but only to serve his friend; and that Mr. Hill's design was to take her out of town, and keep her a week, and see if he could persuade her to marry him; and saith Mr. Hill, 'I shall light on this Mountford.' Why, said I to him, What hurt hath Mr. Mountford done you? Saith he, 'I have been abused, and I will be revenged.'

L. H. Stew. That was Hill that said so.

Mrs. Browne. Yes. So I went and told Mrs. Mountford of it.

Att. Gen. Pray acquaint my lords what

VOL. XII.

my lord Mohun said to you about this matter.

Mrs. Browne. My lord Mohun said he protected her, for if it had not been for him, the mob had torn her in pieces; but if they had a mind to carry her off, they could easily have suppressed the mob, for they had six or seven pistols in the coach: 'but,' saith my lord, 'I had no design upon her myself, but only to serve my friend.' So saith Mr. Hill, 'I shall light upon this Mountford.' 'Why,' said I, 'what hurt hath Mr. Mountford done you?' Saith he, 'I have been abused, and I will have my revenge.' So I went and told Mrs. Mountford of it. About half an hour after, or more, Mr. Mountford came down, and when he came down, I saw him a little before he came to them, and went to him, and would have fain spoke to him, but he would not stay to let me speak what I had to say to him, but going on, presently he met my lord Mohun. Saith he, 'Your humble servant, my lord.' Saith my lord again, 'Your servant, Mr. Mountford.' Saith my lord, 'I have a great respect for you, Mr. Mountford, and would have no difference between us; but there is a thing fallen out between Mr. Hill and Mrs. Bracegirdle.' Saith Mr. Mountford, 'My lord, has my wife disoblged your lordship? if she has, she shall ask your pardon; but as for Mrs. Bracegirdle, she is no concern of mine; and I hope your lordship will not vindicate such an ill man as Mr. Hill in such a matter as this.' Upon that I heard Mr. Hill bid Mr. Mountford draw, Mr. Mountford said, 'That I will;' and drew his sword; but whether he received his wound before he drew his sword, or after, I cannot tell.

L. H. Stew. Speak that last again.

Mrs. Browne. Mr. Mountford and my lord met; saith Mr. Mountford, 'Your servant, my lord;' saith my lord, 'Your servant, Mr. Mountford, I have a great respect for you, and would have no difference between us; but here has been a thing fallen out between Mrs. Bracegirdle and Mr. Hill.' Saith Mr. Mountford presently again, 'Has my wife disoblged your lordship? If she has, she shall ask your pardon. But Mrs. Bracegirdle is no concern of mine: I know nothing of this matter, I come here by accident.'

Att. Gen. Who said they came there by accident?

Mrs. Browne. Mr. Mountford said, 'I know nothing of this matter, I come here by accident. But, I hope your lordship will not vindicate Hill in such actions as these are:' upon that, I heard Mr. Hill bid Mr. Mountford draw; Mr. Mountford said he would, and drew his sword; but whether he received his wound before or after, I cannot tell; it was in the night. [Then the lord Godolphin stood up.]

L. H. Stew. My lord Godolphin.

L. Godolphin. My Lord Steward, I desire this witness may be asked, whether my lord Mohun's sword was drawn when he talked with Mountford, because the counsel opened

3 R

it before, that the watch came to them, and saw them with their swords drawn when they were walking in the street.

L. H. Stew. Mistress, you heard my lord's question: was my lord Mohun's sword drawn whilst he talked with Mountford, or no?

Mrs. Browne. I do not remember I did see my lord Mohun's sword drawn.

Att. Gen. Were they near together?

Mrs. Browne. They were near together.

L. Mohun. I desire she may be asked whether I went up the street to meet Mr. Mountford, or he came down to me?

L. H. Stew. You heard the question, mistress, what say you?

Mrs. Browne. Mr. Mountford came down to him.

L. Mohun. I desire she may be asked, whether she did not go to hinder Mr. Mountford from coming that way?

Mrs. Browne. Yes, I did go to speak to him, but he did not hear me speak, or did not hearken to me; I took him by the hand, and told him I would speak with him, but he did not hear me, but went on.

Att. Gen. You did not tell him upon what account you would have spoke with him?

Mrs. Browne. No, I had no time.

L. Mohun. I desire she may be asked, whether Mr. Mountford's sword was within his arm, or by his side.

Mrs. Browne. I believe it was by his side.

L. Mohun. I desire she may be asked one question more, whether he could not have went home, without coming to Mr. Hill and me?

Mrs. Browne. He did come out of his way; his way was not by my house; he did come down the street towards them.

L. Mohun. I desire your lordships to take notice that he came out of his way to me. I desire to ask her: did he come as if he was going to his own house, or your's?

Mrs. Browne. As if he was coming to mine.

L. Mohun. I desire to ask her, whether I had any hand in killing Mr. Mountford, or went to hold him, or meddled with him?

Mrs. Browne. Not that I did see.

L. H. Stew. Have you any more to say to this witness?

Att. Gen. No, my lord.

L. H. Stew. Nor your lordship?

L. Mohun. No, my lord.

Att. Gen. Then the next witness we desire to call, is Richard Row. [Who was sworn.]

Att. Gen. Richard Row, where do you live?

Row. In Surrey-street.

L. H. Stew. Where doth he live, saith he?

Att. Gen. In Surrey-street, my lord. Pray how near is that to the place where Mr. Mountford was killed?

Row. About ten or twelve pole.

Att. Gen. Did you observe my lord Mohun and Mr. Hill that night, and where were they?

Row. All that I can say to the matter in that

case is, I was in my own house about a quarter after ten a clock, and I heard a noise in the street, and I went out, and saw two gentlemen and two lads about the middle of the channel; one of the lads had one of the gentlemen by the arm, just by the channel, and said, 'Pray my lord, good my lord, don't do it, alter your resolution.' There was an answer made, that they would be revenged that night, or tomorrow.

Att. Gen. Do you know who the boy was that used that expression?

Row. No, my lord, it was very dark.

Att. Gen. Do you not know neither who returned the answer?—*Row.* No indeed.

Att. Gen. But you are sure you heard those words pass?

Row. Yes, indeed, and I went to the door afterwards, whilst they went to the upper end of the street, and returned again; and I saw capt. Hill's boy following him. My lord, I knew capt. Hill, though he was not in the cloaths he formerly used to come to my house in, and the boy I knew to be his boy.

Att. Gen. Were those persons together that you heard speaking so?

Row. Yes, all four together, in a confusion they seemed to be, for they were pushing to and again, and the boy had hold of one of the gentlemen's arms, when he bid him alter his resolution.

Att. Gen. Repeat those words again that you heard him say.

Row. 'Pray my lord, good my lord, do not do it, alter your resolution.'

L. H. Stew. Has your lordship any thing to ask this witness?

L. Mohun. No, my lord.

Row. I spoke of this same afterwards, and so they brought me here to give evidence: this is all that I can say. I cannot swear to my lord Mohun, that he was one, I do not know that ever I saw him to my knowledge in my life.

E. of Mulgrave. My Lord Steward, I desire he may be asked, whether he knoweth who that boy was that made that answer?

Row. There was no answer made by any boy, but begging and praying, 'That my lord would not do it.'

E. of Mulgrave. Do you know who that boy was?

Row. No, I do not know what boy it was. But when I heard Mr. Mountford was killed, and my lord Mohun was concerned, I told what I had heard and seen, and so they bring me here to evidence it. That is all I can say to the matter.

Att. Gen. My lord, we desire next to call some of the watch, and shall begin with Merry. [Who was sworn.]

L. H. Stew. What is his name?

Att. Gen. William Merry. Mr. Merry, I think you are beadle of the parish.

Merry. Yes, I am.

Att. Gen. Pray acquaint my lords what you observed that night Mr. Mountford was killed,

when you saw my lord Mohun and Mr. Hill, the first time; and the second time, when my lord Mohun was taken.

Merry. When I first came down the street, walking the rounds between 11 and 12 a clock, as I turned at the corner out of Surry-street into Howard-street, I saw my lord Mohun and capt. Hill walking, that is, upon the paved stones; my lord was walking towards me, and I asked, Who comes there? Saith my lord, A friend. Said I, What is the meaning of your swords being drawn? Return your swords, and stand off. With that, he returned his sword immediately. Saith he, 'I am a peer of the land; here, will you have my sword?' and he proffered me his sword; but the constable was not there then, and I did not take his sword; but, said I, God bless your honour, my lord, I know not what you are, but I hope you are doing no harm; No, saith he. With that, the constable came immediately, and he proffered the same to him; there were two candles in some maids or women's hands at a door hard by, and I went to ask them if they knew the meaning of it; and there being a neighbour's man leaning with a bottle and a glass against the wall, whom I knew. I think they told me one of them had a sweetheart there; and my lord said, he was drinking a lady's health, and as soon as his bottle was out, he would be gone. That is all I heard of the matter.

Att. Gen. Was Mr. Hill there?

Merry. Yes, he was.

Att. Gen. Was his sword drawn?

Merry. Yes, his sword was drawn, and I asked what made that gentleman with his sword drawn; and my lord Mohun said, he had lost his scabbard; but seeing this neighbour's man stand there, I went to the house.

Att. Gen. Were both their swords drawn at first?

Merry. Both their swords were drawn when I came first into the street; but my lord put up his sword, and the other continued drawn, by reason as they said, he had lost his scabbard. And so seeing, as I said, my neighbour's man standing there, we went to that house to enquire if they knew what their business was; we were not got into the house, I am sure not a stone's cast within the house, but murder was cried out, and we came back again, and my master being nimbler of foot than I, because he was a younger man, came first into the place, and seized my lord before I came; how the seizing was I do not know.

Att. Gen. Our next witness is Thomas Fennell. [Who was sworn.]

Att. Gen. Fennell, you was one of the watch that night when Mr. Mountford was killed.

Fennell. Yes, Sir.

Att. Gen. Give my lords an account what you observed that night, in relation to my lord Mohun and Mr. Hill.

Fennell. The constable and his watch going the rounds, divided themselves into two parts; I went down Surrey-street with one party; the constable he went down Strand-lane with

the other party. We were four or five that came down Surrey-street, and when we came down; my lord Mohun and captain Hill's swords were both drawn; my lord Mohun put up his sword just as we came down.

L. H. Stew. Speak out, man, that my lords may all hear you.

Fennell. I say, the constable and his party went down Strand-lane, and another party down Surrey-street, four or five of us, and my lord Mohun and captain Hill had both their swords drawn: when we came down, my lord put up his sword just as we came down, but the constable not being come, I went and called him.

Att. Gen. You say both their swords were drawn when you came down?

Fennell. Yes, but my lord put up his sword just as we came down.

Att. Gen. What time of night was that?

Fennell. It was between eleven and twelve.

Att. Gen. How long before the murder was committed?—*Fennell.* A quarter of an hour.

L. H. Stew. Do you not say they put up their swords as soon as you came down?

Fennell. My lord Mohun put up his sword, but Hill said he had never a scabbard.

Att. Gen. Did you ask them why they had their swords drawn at that time of night?

Fennell. No, I went to call the constable.

L. H. Stew. Have you any more to ask of this witness?—*Att. Gen.* I have not, my lord.

L. H. Stew. Nor you, my lord?

L. Mohun. No, my lord.

L. H. Stew. Pray go on then; whom do you produce next?

Att. Gen. Our next witness is James Bassit. (Who was sworn.)

Att. Gen. Were you one of the watch that night Mr. Mountford was killed?

Bassit. Yes.

Att. Gen. Did you see my lord Mohun and capt. Hill that night?—*Bassit.* Yes.

Att. Gen. Acquaint my lords where it was, and in what manner you found them.

Bassit. In Howard-street; I came along with the constable, and I walked before them that went down Surrey-street with my lanthorn, and there was my lord Mohun with his sword drawn, and captain Hill with his the like: we asked them what they did there? They said they were drinking of a bottle of wine; Hill said to me, You may knock me down if you please: Nay, said I, we never use to knock any gentlemen down, unless there be occasion; and then we went into Norfolk-street to the tavern to examine what they were, and what they were doing; and in the mean time the murder was done.

Att. Gen. Did you not ask them why their swords were drawn?—*Bassit.* Yes, I did.

Att. Gen. What did they say?

Bassit. Hill made answer, that he had lost his scabbard.

Att. Gen. What said my lord Mohun?

Bassit. My lord Mohun had put up his sword by that time we came up to him: that is all I can say to it.

L. H. Stew. If you have nothing more to ask him, call another.

L. Mohun. My lord, I desire he may be asked whether he came with the constable when I surrendered myself?

Bassit. Yes, and I took hold of your sleeve, and you shook, and quaked, and trembled, as if you would tear it to pieces.

L. Mohun. I desire he may be asked, whether my sword was in the scabbard when I surrendered myself?

Bassit. Yes, it was, he surrendered it.

L. H. Stew. That was after the murder was done.

Att. Gen. With your lordship's favour, I desire he may answer my lord Mohun's first question again, so as to be heard by your lordships: what was that you were saying when my lord surrendered himself?

Bassit. I took him by the arm when he surrendered himself up.

Att. Gen. What then?

Bassit. Then he quaked, and I had him to the Round-house.

L. H. Stew. Hear my question; you say you took him by the sleeve, when he surrendered himself; what do you mean by that? is it that he had surrendered himself before you laid hold on him, or afterwards?

Bassit. I took hold of his arm, when he surrendered himself.

L. H. Stew. But was it before he surrendered himself to the constable?

Bassit. No, it was afterwards, my lord; to have him away.

L. H. Stew. Then you did see him surrender himself to the constable?

Bassit. Yes, my lord.

Att. Gen. Then call Mr. Charles Knowles. (But he did not appear.)

L. H. Stew. Whom do you call next, Sir?

Att. Gen. My lords, we called Mr. Charles Knowles; but they say, he is not come; therefore, with your lordships favour, we will call Mrs. Brewer. (Who was sworn.)

Att. Gen. Mrs. Brewer, I think, you live at the next door to Mrs. Bracegirdle's lodging?

Mrs. Brewer. Yes, I do so.

Att. Gen. Pray give my lords an account what you saw and heard that night Mr. Mountford was killed.

Mrs. Brewer. I was at Mrs. Bracegirdle's house, and I went to the door with them; and just as I went to the door, my lord Mohun came up to me; just as he came to the door, Mr. Mountford came down the street, and my lord went to him, and embraced him, and said, Mr. Mountford, your humble servant, I am glad to see you. Who is this, said Mr. Mountford, my lord Mohun. Yes, said my lord. What makes your lordship here at this time a night, saith Mr. Mountford? Saith my lord again, I suppose, Mr. Mountford, you was sent for. Sent for, for what, saith he? You have heard of the business of Mrs. Bracegirdle, I suppose, saith my lord; no, my lord, saith he, I come by chance.

Att. Gen. Who said that?

Mrs. Brewer. Mr. Mountford, Sir.

Att. Gen. Well, go on, and speak aloud.

Mrs. Brewer. My lord, Mr. Mountford— And there she hesitated, and seemed to be in a confusion.

Att. Gen. She is not used to such public examinations: if your lordships will please to allow her to begin, because she is in some confusion, she will be the better able to give you what account she can of this matter.

L. H. Stew. Let her recollect herself, and begin again.

Mrs. Brewer. When Mr. Mountford came down the street, I stood at the door, and my lord Mohun was come to the door, and my lord Mohun went to him and said, Mr. Mountford, your humble servant, I am glad to see you, and embraced him. Saith Mr. Mountford, Who is this, my lord Mohun? Yes, saith he, it is. What maketh your lordship here at this time of night? Saith my lord Mohun, I suppose you are sent for, Mr. Mountford. No indeed, said he, I came by chance. Saith my lord, You have heard of the business of Mrs. Bracegirdle. With that, after he had said this, Mr. Hill cometh up, and saith, Pray, my lord, hold your tongue, this is not a convenient time to discourse this business, and would have drawn my lord away. Saith Mr. Mountford, I am very sorry, my lord, to see that your lordship should assist capt. Hill in so ill an action as this; pray let me desire your lordship to forbear. Upon this, as soon as he had said so, Mr. Hill came up and struck Mr. Mountford a box on the ear. Saith Mr. Mountford, Damme, what is that for? And with that, he whipped out his sword, and made a pass at him, and I turned about and cried out Murder, murder.

Att. Gen. But you say, you saw Hill draw his sword, and make a pass at him?

Mrs. Brewer. No, his sword was drawn before; but he, immediately after the box on the ear, made a pass at him, and I turned about and cried Murder.

Att. Gen. Had Mr. Mountford his sword drawn at that time?

Mrs. Brewer. No, he had not.

Att. Gen. Are you sure he had not?

Mrs. Brewer. Yes I am sure he had not, for as soon as he struck the blow, he made a pass at him.

Att. Gen. Was my lord present at that time?

Mrs. Brewer. He stood just by on the right-hand.

Att. Gen. How near to them?

Mrs. Brewer. They were all close together, as well as I could discern.

L. H. Stew. My lord, have you any mind to ask this witness any questions?

L. Mohun. No, my lord.

L. H. Stew. Have you done with her?

Att. Gen. Yes, my lord. The next witness we desire to call is Mr. Davenport, the constable. (Who was sworn.)

L. H. Stew. Well, what saith this man?

Davenport. The 9th of December last at night, as I was walking my rounds between eleven and twelve o'clock, I divided my watch into two parts, one was to go down one street, and the other another, and coming into Howard-street, my beadle happened to be there before me, and he had spied them, as he told me, with their swords drawn: as soon as I came up, my lord Mohun very civilly (his sword not being then drawn) proffered to surrender his sword to me, and said, he was a peer of the realm. I asked the other man what he did with his sword drawn? and he made answer, he had lost his scabbard in Drury-lane. With that I found them very civil, and I heard some women at the door, and they said, they were serenading them with a bottle of wine. There was a drawer there that I knew, who formerly lived over-against me, and then lived at the White-horse tavern; so I left them (finding them very civil) and went to the White-horse tavern to examine what the business was; they told me, they were there a drinking, and before I had spoken three words almost to the man of the house, the watch was called, and when we came, Mr. Hill had made his escape, and so I secured my lord Mohun.

Att. Gen. What was the occasion of calling the watch?

Davenport. They cried out Murder in the street; so I took my lord Mohun, and carried him to the Round-house, where we kept him all night.

Att. Gen. I think you say, when you first came my lord Mohun's sword was not drawn.

Davenport. It was put up then, but the beadle said they were both drawn before.

Att. Gen. You did not see them so soon as your beadle?

Davenport. No, he was there before me.

Att. Gen. Then acquaint my lord what was done, after you had secured my lord Mohun.

Davenport. After I had taken him, I carried him to the Round-house, and when we came there, he asked me, If Hill was taken? I said no; and said I, my lord, this is a bad misfortune you are happened into; and he said, 'God damn me, I am glad he is not taken, but I am sorry he has no more money about him; I wish he had some of mine; and, I do not care a farthing if I am hanged for him.'

L. Mohun. My lord, I desire he may be asked whether I offered to fly.

Davenport. No, my lord, I do not say you did, but you know, my lord, you said this to me.

L. H. Stew. But, Mr. Davenport, did not my lord surrender himself to you?

Davenport. Yes, my lord, mighty civilly.

Att. Gen. Did my lord say any thing to you about changing of coats?

Davenport. He said, they had changed coats three or four several times that day, and at the same time he had Hill's coat upon his

back; and I asked him, if he knew where Hill's lodging was? and he told me; and I went to his lodging with my watch; and when we came there, we searched the house, but did not find him there; but captain Hill's boy came in whilst we were there; so with that, I secured the boy, and searched him, and found gunpowder and ball about him; and I have Hill's sword in the court, and Mr. Mountford's and my lord's.

L. Mohun. I desire he may be asked, whether Mountford's sword was not broke in the street, or whether he carried it away.

Davenport. I took up a piece myself, and a servant maid took up another in the street.

L. Mohun. I desire he may be asked, whether Mr. Mountford's sword, when it was found, was in the scabbard or not.

Davenport. No, it was not; I saw no scabbard.

L. H. Stew. My lord, you ask the questions so fast, that we do not hear the answers. Was not your first question, whether Mountford's sword was not broken?

L. Mohun. Yes, my lord.

L. H. Stew. What answer giveth he to that?

Davenport. I do not know when it was broken; but by the report of people that were there by, it was said, Mr. Mountford made a pass, and at the first pass his sword was broken; and I went with a lanthorn, and according as they said, I found a piece of a sword, and I took it up myself.

L. H. Stew. What is your next question, my lord?

L. Mohun. I would ask him in what part of the street he found the piece of the broken sword.

L. H. Stew. You heard the question, what say you?

Davenport. It was in the highway in the street.

L. H. Stew. My lord Mohun, what do you mean by that question?

L. Mohun. Whether it was in the middle of the street towards Surrey-street or Norfolk-street, or near Mrs. Bracegirdle's lodging, or upon the pavement?

Davenport. It was over against the door where you stood.

L. Mohun. How far might it be from where I stood? I desire he may be asked that.

L. H. Stew. You hear my lord's question, answer it.

Davenport. He was walking up and down when I came to take him; and I took the piece of the sword up in the highway; he was walking on the pavement, the broad stones.

L. H. Stew. Have you done with that witness?

Att. Gen. Yes, my lord. Is Mr. Charles Knowles come? He did not appear.

Att. Gen. Then we desire to call Mr. Bancroft the chyrurgeon, and Mr. Hunt.

L. H. Stew. Who do you examine first?

Att. Gen. We begin with Mr. Bancroft. [Who was sworn.]

Att. Gen. You attended upon Mr. Mountford, Mr. Bancroft, when he was wounded?

Bancroft. Yes, my lord.

Att. Gen. Pray acquaint my lords what you know of this matter.

Bancroft. My lord, upon the 9th of December last at night, between the hours of twelve and one, I was knocked up to go to Mr. Mountford, whose servant came for me, and told me, he was a dying of a wound he had received. So I came to his house, and found him very desperately wounded; it went in and out by his back bone, behind his left side. I told him what he must expect, that he was a dead man. I attended him that night till about four a clock, in the morning, and then I took my leave of him, and went home: about eight a clock in the morning I came thither again, and met Mr. Hobbs there, and he was of the same opinion. He lived till about one, and then he died.

Att. Gen. What discourse had you with Mr. Mountford?

Bancroft. About ten a clock, I was sent for by the constable to come to Hick's-hall to be examined there before the justices; and being then with Mr. Mountford, and some company being there, Mr. Powell (as I take it) was one; I said to Mr. Mountford, I suppose where I am going, I shall be asked some questions about what you may have said to me; you are now upon the brink of eternity, and pray answer me truly, who gave you this wound; was it Mr. Hill, or my lord Mohun? Said he, My lord Mohun offered me no violence, but while I was talking with my lord Mohun, Hill struck me with his left hand, and with his right hand run me through before I could put my hand to my sword.

Att. Gen. Did he tell you his sword was drawn?

Bancroft. He did not say, it was or not, but that Hill struck him with his left hand, and at the same time, run him through with his right, before he could put his hand to his sword.

Att. Gen. Did he tell you my lord Mohun's sword was drawn?

Bancroft. The words were these as near as I remember, My lord Mohun offered me no violence, but whilst I was talking with him, Hill with his left hand struck me, and with his right, run me through, before I had time to put my hand to my sword.

Att. Gen. Did he tell you he had his sword drawn at all afterwards?

Bancroft. No, not a word of that, that I heard.

L. H. Stew. My lord Mohun, have you any thing to say to him?

L. Mohun. No my lord.

Then Mr. William Hunt was sworn.

Att. Gen. Mr. Hunt, you have heard what Mr. Bancroft was examined to, do you give an account what you know in relation to this business.

Hunt. I was sent for to Mr. Mountford, when he lay very ill; and I then asked him

the manner of his being hurt, he said, My lord Mohun spoke to me, but Hill run me through before my sword was drawn. I asked him, whether he had time to draw his sword? and he said Hill was in me, and was through me, before my sword was out; and this he repeated again about twelve a clock, about half an hour before he died the next day.

L. H. Stew. Will you ask him any thing else, Mr. Attorney?

Att. Gen. We shall ask him no more questions, my lord.

L. H. Stew. Will you ask him any, my lord Mohun?—*L. Mohun.* No, my lord.

L. H. Stew. Then have you any more witnesses?

Att. Gen. My lord, I do not hear that Mr. Knowles is come yet; and if he be not come, we have no more witnesses to examine; if he does come, we must beg leave that we may examine him.

L. H. Stew. You know that the court cannot stay; for after you have done on both sides, my lords are to withdraw, and we are not to sit here in expectation of your witnesses.

Att. Gen. My lord, we do not expect that; if my lord Mohun please to examine any witnesses on his part, and it happen that the witness should come before my lord has made an end, we hope your lordships will favour us so far, as that we may examine him.

L. H. Stew. My lord Mohun, if you have any witnesses to be examined, now is your time to call them.

L. Mohun. I desire first, Mr. Hill's foot-boy may be called.

L. H. Stew. Name him. [He came to the bar.]

L. Mohun. My lords, if you please, I desire Mr. Brereton may be called first, because I would prove to your lordships, and shew you I had no malice to Mr. Mountford.

L. H. Stew. I thought you had called that boy first.

L. Mohun. That was a mistake, my lord; this gentleman, Mr. Brereton, I desire may be first examined.

Mr. Brereton. My lord, I know nothing as to this matter of fact, for I had not seen my lord Mohun of two or three days before.

L. H. Stew. What do you examine this witness to, my lord?

L. Mohun. To shew that I had no malice against Mr. Mountford, but spoke kindly of him several times.

Brereton. I had not seen my lord Mohun for two or three days before this fact was committed, and therefore can give no account of what happened then; but the Friday before the play of Alexander the Great was acted, and my lord Mohun and I were at the Play-house, and he and I went to supper together, and we were talking of the play, and he said it was a good play, and commended several parts in it, and particularly the acting; and he commended Mr. Mountford's acting extremely: I said, I thought he never acted so well in his

life before; but my lord spoke particularly very kind things of Mr. Mountford, that he thought him a very good actor. I answered, as to comedy, he did use to act very well, but I thought he would never make so good a tragedian as Mr. Betterton, or some others. But my lord before this, had used to commend Mr. Mountford and speak kindly of him: and he said, that several of the players had been very rude to him, more than their business did require of them; but Mr. Mountford had been more civil than any of the rest. Upon this, my lord Mohun was pleased to ask me, Whether I was acquainted with Mr. Mountford? I told him, I never was in his company but once with Mr. Bludworth. Saith my lord, I have a great mind to drink a bottle of wine with him. Said I, I do not think him worth your acquaintance, but you may do what you will. Several things more my lord said, and spoke more kindly of him than of any of the rest of the players; but there was no time fixed for drinking with him. Upon Tuesday after, my lord Mohun came to my lodgings, and told me, Mr. Mountford had been very civil to him the night before at the Play-house, when the rest were very rude to him; and he had a mind to drink a bottle of wine with him. Saith he, I am going about some business to Kensington, but within a day or two you shall certainly hear of me, and we will fix a time for it, and if I do not like his company, I will never trouble you, nor myself more with it.

L. H. Stew. When was this, Sir?

Brereton. This was the Tuesday before; the first discourse was upon the Friday before.

[Then the Boy was examined.]

L. Mohun. Was you along with me and Mr. Hill, that night Mr. Mountford was killed?

L. H. Stew. My lord, you must propose your questions to me, and I will ask them.

Att. Gen. I desire to know what the boy's name is, and who he is.

L. Mohun. His name is Thomas Lake, and he was Mr. Hill's foot-boy.

L. H. Stew. What do you ask him, my lord?

L. Mohun. Pray, my lord, ask him if he was with Mr. Hill and me, that night that Mr. Mountford was killed.

L. H. Stew. You hear the question, what say you to it?—*Boy.* Yes, my lord.

L. H. Stew. I do not hear what you say.

Boy. I was with them, my lord, and all I heard was, they had a design to take away the woman, Mrs. Bracegirdle, and they had provided night-cloaths and a coach for her, to go to Totteridge, which was the place where they designed to carry her.

L. H. Stew. I do not hear one word this boy saith.

L. Mohun. My lord, shall I repeat to your lordship what the boy saith?

Lords. No, no, no.

L. H. Stew. No, my lord, you are not to repeat what your own witness saith.

Boy. They had a design to carry away the woman, Mrs. Bracegirdle.

L. H. Stew. I do not hear one word. That boy can speak out, if he pleaseth: I warrant him, he would make noise enough if he was in another place. Speak out, that my lords may all hear you.

Boy. I cannot speak any louder than I do; I say, they had a design to carry away the woman.

L. H. Stew. I may as well be at the other end of the town, as in this place, as for hearing what he saith. Somebody should repeat what he saith.

L. Mohun. If your lordship please to allow it, that one of the officers of the court may come down to the bar, and repeat from his mouth to the court what he saith.

Lords. Aye, aye.

L. H. Stew. Mr. Walker, then do you go and stand by him and tell us what he saith.

Mr. Walker the clerk went and stood by the boy at the bar, and repeated his evidence aloud.

Mr. Walker. My lord, he saith, they had a design to take away the woman, and they had night cloaths in the coach for the woman to put on, and they enquired at the woman's lodging where she was, and there they were told, that she was at Mr. Page's at supper, and her brother came to the Horse-shoe tavern and drank with them, and he was to go to tell them when she came out, and which way she was to go home; and there was a man that was to give notice, and they went down before her, and the coach stood almost at the lower end of Drury-lane, where there were some soldiers to put her in, and the soldiers went and took hold of her.

L. H. Stew. Is this my lord Mohun's witness?

Mr. Walker. Yes, my lord; and he saith, when they went to take hold of her to put her in, Mr. Page struggled with them, and would not let them, and she cried out, and was very much troubled at it.

L. Mohun. My lord, I desire he may be asked, whether he was in Howard-street when Mr. Mountford was wounded, and what passed in Howard-street before Mr. Mountford was wounded?

Mr. Walker. He saith, he was in Howard-street, and saw Mr. Mountford come down in Norfolk-street towards them, and turn into Howard-street, but out of his way to his own house; he saith, he came down, and there met my lord Mohun and his master, Mr. Mountford did; and he came to my lord Mohun, and bowed to him, and said, He had a kindness for his lordship. And my lord Mohun replied, He had a kindness for him. My lord Mohun said to him, He hoped he was not come to vindicate any thing of Mrs. Bracegirdle. Mr. Mountford said Not, and asked if his wife had done any thing to him, and said, He was very sorry his lordship should have any thing to do to vindicate Mr. Hill in such rudeness. He saith,

captain Hill was at the lower end of the street, and captain Hill heard him say so, and came up and said to him, Mr. Mountford, if you have any thing to say to me, I can vindicate myself, and pray now draw; and he went into the street, and Mr. Mountford drew, and met him, and made three or four passes, and in the passes, the sword was broke. He cannot tell which sword it was that was broke, he supposeth it hit against the hilt, and snapped in two.

L. Mohun. I desire he may be asked, where I was when they fought?

Mr. Walker. My lord stood upon the flat stones, he saith, by the house side all the while, and they were in the middle of the street.

L. Mohun. My lord, I desire he may be asked, whether Mr. Mountford had his sword by his side, and where it was, and whether I meddled with him?

Mr. Walker. He saith my lord Mohun did not meddle with him, but stood upon the flat stones, nor did offer to draw his sword, and when Mr. Mountford came down, he carried his sword in his hand.

L. Mohun. My lord, I desire he may be asked, whether Mr. Hill did not stay in the street to ask Mrs. Bracegirdle's pardon.

Mr. Walker. He saith, he desired to see Mrs. Bracegirdle, and to beg her pardon, and as soon as he had seen her, he would be gone.

L. H. Stew. How can he tell that? Where was he?

Mr. Walker. He was just by my lord Mohun, and Mr. Hill in the street, and Mr. Hill said he would but stay, and beg Mrs. Bracegirdle's pardon for what he had done, and he would go home.

L. Mohun. I desire he may be asked, whether I offered to fly when his master went away?

L. H. Stew. What is it you ask, my lord?

L. Mohun. Whether I offered to run away, or make my escape?

Mr. Walker. He saith, my lord did not offer to run away, but stood still, and he said he had done no hurt, nor drawn his sword.

L. Mohun. I desire to ask him, whether I could not have run away as well as Mr. Hill, if I had had a mind?

Mr. Walker. He saith, he might have run away as well as his master Mr. Hill, but he stood still a great while, till the watch came and took him, and he gave himself up.

Att. Gen. My lord, before the boy goeth away, I desire to know of him whether he has not been already examined upon his oath elsewhere?

Mr. Walker. Yes, my lord, he was examined at Hicks's-hall, and was kept in prison two days.

Att. Gen. Were you examined before the coroner?

Mr. Walker. He saith, he was examined before the coroner.

Att. Gen. Which was the first place he was examined at?

Mr. Walker. He saith, he was examined at Hick's-hall first.

Att. Gen. When he was examined before the coroner, did he give the same evidence as he does now?

Mr. Walker. He gave the same evidence before the coroner that he doth now, as near as he can remember.

Att. Gen. When you did make oath before the coroner, was it read to you what you swore?

Mr. Walker. He saith, his evidence was not read to him.

Att. Gen. Did you subscribe the evidence you gave before the coroner yourself?

Mr. Walker. Yes, he did.

Att. Gen. Did not you write your name yourself?

Mr. Walker. Yes, he saith.

Att. Gen. Did you not know what it was you subscribed your name to?

Mr. Walker. He saith, it was not read to him afterwards, he knoweth what it was he gave in.

Att. Gen. Are you sure it was not read to you?

Mr. Walker. He saith, he is sure it was not read to him.

L. H. Stew. Was it not read to him before he subscribed it?

Att. Gen. That I did ask him, my lord.

Mr. Walker. He doth not remember that it was read to him at all.

L. H. Stew. Can he read himself?

Att. Gen. He writes a very good hand, my lord.

Mr. Walker. He saith, they bid him put his hand to it; and as soon as he had put his hand to it, they put him out, and bid him call another woman.

Att. Gen. I would have him consider of it, before he makes answer; because there are several persons present here, who were present when it was read to him before he subscribed it.

Mr. Walker. He cannot remember that it was read to him.

Att. Gen. Do you remember you swore at that time, that when Mr. Mountford and Mr. Hill were pushing at one another, my lord Mohun said, he would stand by his friend, and Mr. Hill was his friend.

Mr. Walker. He saith, my lord said, he would not go, he would stay by his friend, for Mr. Hill was his friend.

E. of Carlisle. My lord steward.

L. H. Stew. My lord of Carlisle.

E. of Carlisle. I desire that he may be asked, whether he was the boy that said to my lord Mohun, Pray, my lord, good my lord, do not do it, alter your resolution.

L. H. Stew. Call the boy again. [Which was done.] Was you by when those words were spoken? Pray, my lord, will you repeat your own question?

E. of Carlisle. Whether he was the boy that said to my lord Mohun, Pray, my lord, good my lord, do not do it, alter your resolution, or defer it to another day?

Boy. No, my lord, I did not hear him.

L. H. Stew. Did not you say so yourself?

Boy. I said no such thing, nor heard no such thing said by any body.

L. H. Stew. Do you bring any more witnesses, my lord?

L. Mohun. Yes, my lord, Mrs. Elizabeth Walker, Mrs. Bracegirdle's maid.

Eliz. Walker. Here, my lord, I am she.

Att. Gen. My lord, before my lord Mohun proceedeth to examine any other witness, I have one thing humbly to offer to your lordships.

[Then Proclamation was made for silence.]

Att. Gen. Of what consequence it will be to my lord Mohun, I must submit to your lordships when you have heard it; that is, whether it may not be proper now, since this boy has given an evidence so very different from what he gave upon his oath before the coroner, to have his deposition that he made before the coroner, read in his presence.

L. Mohun. My lord, I think I ought to conclude and give all my own evidence before Mr. Attorney maketh his remarks.

L. H. Stew. Then reserve that till the last, Mr. Attorney.

Att. Gen. My lord is certainly in the right of it; there ought to be no observations made upon his evidence, and we shall be sure to keep exactly to the usual method in this matter; but I take it to be the course of evidence, where there is an objection to what the witness delivers now, which does arise from what the same witness has sworn before, it is proper to make the objection, as soon as he has delivered such evidence, whilst the matter is fresh in your lordships' memories.

L. H. Stew. Mr. Attorney, let the boy stay, he shall be called upon afterwards; but let my lord go on now with the rest of his witnesses.

L. Mohun. Here is Elizabeth Walker, my lord.

L. H. Stew. What is that woman's name?

L. Mohun. Elizabeth Walker, did you live with Mrs. Bracegirdle?

Eliz. Walker. Yes, I did, my lord.

Att. Gen. This person has concealed herself; we have been endeavouring to find her out all this while, but could not.

L. H. Stew. What do you ask her, my lord?

L. Mohun. I desire she may be asked, whether she lived with Mrs. Bracegirdle, and what she saw and observed that night Mr. Mountford was killed.

Eliz. Walker. If it please you, I lived then with her.

L. H. Stew. I cannot hear what she said; Mr. Walker, I think you must go thither again; speak out, woman.

El. Walker. I was her servant at that time, when Mr. Mountford was killed. And, may it please you, my lord, that night, old Mrs. Bracegirdle and her daughter were invited to supper, at one Mrs. Page's in Drury-lane, and

coming home about ten or eleven o'clock out of Drury-lane, my mistress desired me to go to Mr. Mountford, to see if Mr. Mountford was come home. I went, and they said, he was not come home: she desired me then to go again, and tell Mrs. Mountford, that if he was not come home, she should send to see where he was, and desire he would not come home without a good guard, for my lord Mohun and captain Hill were walking about the street, and she did not know their design, by reason Mr. Hill had his sword drawn in his hand, out of the scabbard. I asked the reason why he had his sword drawn, and the answer was made, he had lost the scabbard in a skirmish in Drury-lane; but that I know nothing of. Mrs. Mountford said, She would send her maid to see where her husband was, and I told her, if my mistress would give me leave, I would go along with her to bear her company. And when I returned to my mistress, she did give me leave, and I went along with her to several places; but we could not find Mr. Mountford; so coming home, I went to my mistress, and I saw them two stand at the door, and they staid there above an hour, and in the mean time our landlady, Mrs. Browne, heard the watch come into the street, and she said, she would go to the door, and bid the watch seize them; and she did go out, and I was kept within doors, and heard her talk to the watch, but what she said I cannot tell; but presently the watch went away and left them. And I stood at the door, and heard Mrs. Browne say, There cometh Mr. Mountford, and she would go speak with him; and with that she went as fast as she could to meet him, and came to him a good way before he came down to them, and took him by the arm thus, to stay him, and she said captain Hill and my lord Mohun were walking in the street, and captain Hill had his sword in his hand drawn, and she did not know what their design was.

L. H. Stew. Indeed she must speak louder, or I cannot tell what she saith.

El. Walker. My lord, I say, Mrs. Browne, when I was at the door, said, Yonder cometh Mr. Mountford, and she said, she would go and meet him, and away she went as far as she could towards him; and when she came up to him, she took him by the arm thus, and desired him that he would not come down that street, but go to his own house, for there were captain Hill and my lord Mohun walking in the street, and she did not know what their design was, but captain Hill had his sword drawn in his hand. If it please you, my lord, Mr. Mountford did not answer a word; but pressed forward to meet my lord Mohun and captain Hill. If it please you, my lord, they met one another, and my lord Mohun and Mr. Mountford complimented one another very lovingly, and said, They were glad to see one another; and Mr. Mountford said to my lord, He had a great respect for his lordship, and my lord replied to him again, By my honour, I have the like for you, Mr. Mountford; and

with that, they embraced one another; I am sure this is truth, for I followed Mrs. Browne out, and stood by when it was done. Mr. Mountford told my lord, it was a dishonour to him to keep company with captain Hill. I will not take my oath that captain Hill did hear him say so, but he might have heard him, and it may be he did too; and that might occasion the quarrel; but I will not take my oath of that: it came just in my head after this was said, that our door was open, and I turned my back to hear and look who was at our door, and I heard Mrs. Browne say, that captain Hill and Mr. Mountford were going to fight: I saw them fighting, making passes at one another, I saw them engaged, I never saw men naked fighting so in my life. [At which there was a great laughter.]

El. Walker. My lord, I do not understand these matters, I tell you as well as I can, they were fighting with naked swords, Mr. Mountford's sword was upon Mr. Hill hereabouts, and Mr. Hill's sword was upon Mr. Mountford hereabouts; and after they had made two or three pushes at one another, Mr. Mountford said, he was killed, and threw down his sword thus, and I took it up, and there was a good piece of the sword broken off. I turned me about thus, towards our own hatch at our door, and there stood two or three people, I cannot say who they were, but I gave them the sword, and I turned my face towards Surrey-street, and saw captain Hill making his escape, running up Surrey street; and, if it please you, my lord, Mr. Mountford was the friend I had most respect for; and I saw him, as fast as he could, going towards his own house, and my lord Mohun stood in the same place that he was in, when he and Mr. Mountford were embracing one another, and I did not see my lord Mohun stir from that place; but when they fought, they were engaged in the middle of the pitched stones, where there was a place made for the water to run along the street like a channel: and to my knowledge, I did never see my lord Mohun off of the paved stones, on the side. I cannot say he was never off, when my eye was turned another way; but to my knowledge, I never saw him off of those stones. If it please you, my lord, the next thing that I saw, was this, after captain Hill run up Surrey street, and Mr. Mountford did go home, I saw my lord Mohun walking up to the end of the street, where the watch were coming, and when the watch came, I see him deliver himself up to the watch; but I think one of the watch said, he must have his sword, and he did deliver up himself and his sword to the watch. And he bid me take notice, bear witness, said he, I have no hand in the death of Mr. Mountford. Said I, No, my lord, I think you have not. The next thing I remember, was Mrs. Page came and said Mr. Mountford was killed, upon which, said my lord Mohun to her, bear witness, I had no hand in his death. Said she, you were in his company, therefore seize him and carry him to the round

house; and the watch did secure him; and my lord answered, as he was a gentleman, he desired to be used like a gentleman; and they did carry him away to the round house. This is the thing that I did say, as near as I can remember, to the justices; but I have been very much abused and distracted amongst them, and therefore to a word I cannot say; but as near as I can remember, being abused at the rate I have been, this I did then say, and it is the truth.

L. Mohun. I desire she may be asked, whether she was not examined before the justices at Hicks's hall, and whether she was not then Mrs. Bracegirdle's maid.

L. H. Stew. Truly, my lord, I have heard very little of what she has said, but I hope my lords that have been nearer have observed it.

El. Walker. If it please you, if you ask what was done at Hicks's hall, I will tell you just as it was, what happened there, and so proceed on to tell you how I have been abused.

L. H. Stew. My lord, what would you have her asked more?

L. Mahon. I desire to ask her, whether she was not Mrs. Bracegirdle's servant when she was examined at Hicks's hall, and whether she swore the same there, as she saith here, and what was done to her since, or what they would have done, and whether they did not try to make her speak what they would, and to put her out?

El. Walker. If it please you, my lord, that next morning, there came several of the players to me, to ask me what I knew of the death of Mr. Mountford, and I told them; but they did not like what I said, and they seemed discontented at me. And when they were to go to Hicks's hall, they said, they had no need of my evidence, they could do without me. So Mrs. Browne and her maid they went away, and left me at home; what they did, or where they staid, I do not know: but about two or three hours after, a messenger came and said, my mistress and I must go to Hicks's hall to be examined before the justices; and we went, and when we came there, all were examined, and I was examined in the last place; where, my lord, I gave in the same evidence that I do now, as near as I can speak. I do verily believe it to be the same, but I have had so much trouble with their abusing me, that I cannot speak to every word or particular thing. For my mistress stood before me, and said, they brought evidences that confounded themselves; and another said, hang her a jade, pull her by the coat. I turned me to the justices, and said, I hoped I might speak now I was there; but it may be for fear of my mistress, I did not then speak all that I have done now, because I have called more since to my remembrance. And there is one particular thing that I call to mind now; I remember that in our parlour, as soon as they came home out of Drury lane, there was a discourse between my old mistress, and my young, that captain Hill waited at the door to see my mistress, and

that if he might but have leave to see her, and to beg her pardon, they would be gone thence to their own lodging; and I said to my mistress. If she would give me leave, I would go out to them, and demand captain Hill's sword, and then he might come in.

L. Mohun. I desire she may be asked, Whether she was not turned away and threatened?

El. Walker. I am going on to tell my lord what happened in our house that night. I told my mistress, if she would give me leave, I would undertake to get captain Hill's sword from him, and then she might let him come in and see her, and beg her pardon, and I thought it would prevent a great deal of danger that might follow else. And my mistress said, I was a prating slut, and my young mistress said if he begged her pardon upon his knees never so, she would never forgive him, nor see him more. My lord, there was another discourse in the street, that captain Hill had made a vow that he would kill himself that night, and that lord Mohun, having a respect for him, watched to prevent him from doing himself a mischief. That was discoursed in the street, but I cannot say it was so of my own knowledge.

Then another Proclamation for Silence was made.

L. Mohun. I desire she may be asked, whether she was not turned away, and whether she was never threatened.

Eliz. Walker. If it please you, my lord, that night that I gave in my evidence at Hicks's hall, by their talking, I knew before I went from home what a life I should have with my mistress, for I knew they did not like my evidence, and I was afraid of coming home, and went and staid with my sister; but notwithstanding I went home about nine a clock, and they were very inveterate against me, and I told one of them, I had witnessed the truth, and nothing but the truth, and that I would stand by. If it please you, my lord, the next morning there was this Ann Jones that lay with me that night, and she told me that in the morning they threatened, and intended to fetch me to Mrs. Mountford to rattle me for what account I had given in, and she giving me this item, I got up, and went to dressing my dinner, and Mrs. Mountford sent a man, that I know by sight, I think it was one Roberts, I believe that was his name; whereupon he came and asked me where was Mrs. Bracegirdle's maid; I said, I was she, and then he said Mrs. Mountford desired me to come to her. I said, I had given in my evidence where I ought to do it, and I had nothing to do with her; but it was upon this account, not that I had any antipathy against Mrs. Mountford, but only as Ann Jones had given me that item of a design to send me to her, to rattle me for the evidence I had given in, and I did not know what might come of it, or what their design might be.

Att. Gen. My lord, I would not interrupt any witness, but because she speaks of what was said by Jones, and Mrs. Bracegirdle, I desire they may be by to hear what she saith.

L. Mohun. My lord, I desire my witnesses may not be hared.

L. H. Stew. This is not haring of evidence, my lord.

L. Mohun. My lord, I desire I may go on with my evidence without interruption.

L. H. Stew. My lord, this is no interruption.

Att. Gen. Pray, my lord, let Mrs. Mountford be called in to hear what she saith of her; I desire she may be by.

L. Mohun. My lord, I have no more to say to her.

Att. Gen. But then, my lord, before she goeth away, I have two or three questions to ask her.

L. H. Stew. What do you ask her, Mr. Attorney?

Att. Gen. She saith she was examined at Hicks's hall, I desire to know if ever she was examined before the coroner.

Eliz. Walker. If it please you my lord, I was not, and I will give you the reason.

Att. Gen. Ay, pray let us hear it.

Eliz. Walker. Why you have not heard how badly they used me after this.

Att. Gen. But pray, mistress, answer my question.

Eliz. Walker. But, my lord, if it please you, I went to my sister, and staid with her till eight or nine, and my aunt told me there had been a porter to enquire for me, to go to the jury; I was sorry I was not at home, but I took a neighbour with me to go to Mrs. Mountford's, to see if the jury were not gone; and I knowing how they had threatened me, I desired him to leave me at a victualling-house by Temple-bar, and go and tell them, if the jury were not gone, I was ready to wait upon them; he went, and I remained at the victualling-house, and he came again, and told me Mrs. Mountford said they had done without me; but he was a little surprized.

Att. Gen. My lord, she maketh a long answer to a short question. I would ask her another question presently; but by the way, as to this examination at Hicks's hall, I would observe that it is a very unusual, and, I think, under favour, a very unwarrantable thing for justices of the peace, to take upon them, under a pretence of considering, in order to bail a person charged with murder, to enter into a particular examination of every one of the king's witnesses, as if they were either a grand inquest, charged upon oath for finding a bill of indictment, or coroners to take an inquisition of the murder, both the grand jury and the coroner are upon their oaths to keep the king's evidence secret; but this is to make it public by an indirect way by a justice of peace's examining, in order to the bailing of an offender. But I would observe this woman goeth away from her mistress, and continueth away;

and concealeth herself; she was not to be found to be examined before the coroner, the proper officer, nor are we able to tell where she has been; I desire some account may begin in whose hands she has been all this time.

L. Mohun. My lord, I desire your lordship's opinion, whether this may be permitted, that he should talk thus.

L. H. Stew. What do you say, my lord?

L. Mohun. My lord, I desire to know whether he may interrupt me in my evidence thus: all this matter is foreign to the business before your lordships.

Att. Gen. If you please, I would ask her this one question.

Lord ———. Under Mr. Attorney's pardon, I think the prisoner, or his witnesses, ought not to be interrupted; but if he have any remarks upon the evidence, when they have gone through he may call them again, and ask them any questions, or make any remarks upon them.

Att. Gen. My lord, I would ask her but one question.

L. H. Stew. What is it, Mr. Attorney?

Att. Gen. If she heard Mrs. Browne say to Mr. Mountford that she would not have him come forward, because my lord Mohun and Mr. Hill were there, and she did not know what their design was?

Eliz. Walker. If it please you, my lord, I did hear them, and I was just by them; and there was none but she and I.

Att. Gen. She upon her oath saith, she did not tell him any thing more, than that she would speak with him; but he did not hear her, or hearken to her: but, my lord, I have no more questions to ask her.

L. H. Stew. Have you any more to ask this witness, my lord?

L. Mohun. No, my lord.

L. H. Stew. Who is your lordship's next? pray call your witness.

L. Mohun. I desire Ann Jones may be examined. [She came to the bar.]

L. H. Stew. What doth your lordship examine her to?

L. Mohun. I desire she may be asked what she knoweth of what passed that night Mr. Mountford was hurt, and tell the whole story.

Jones. First, I saw Mrs. Bracegirdle coming home with her mother and Mr. Page, about ten a clock at night, and there were captain Hill and my lord Mohun with them when they came home, but they did not come in with them, but walked in the street about an hour and an half; and after they came in, Mrs. Browne sent to Mrs. Mountford, for she said captain Hill had some design, and my lord Mohun, upon Mr. Mountford, but Mr. Mountford not being at home, they sent to all the taverns thereabouts but could not find him; they came home again, and told Mrs. Mountford and Mrs. Bracegirdle, they could not find him, and there my lord Mohun and captain Hill walked to-and-fro about the street for an hour and half in all; about an hour after

they had been to look for Mr. Mountford, or about three quarters of an hour, Mr. Mountford came down, and I saw my lord Mohun and captain Hill at this door.

L. Mohun. At whose door, I desire she may be asked.

Jones. At this Mrs. Browne's door, and Mr. Mountford coming down my lord Mohun met him, and embraced him, and said, he had a great honour and friendship for him, and Mr. Mountford said, he had a great honour and respect for his lordship. Saith my lord Mohun, Mr. Mountford, I suppose you are sent for. No not, I upon my honour, said he. Upon that he up and said how they had like to have got Mrs. Bracegirdle into a coach, and carried her away, but were prevented. Saith Mr. Mountford, as to Mrs. Bracegirdle, I have nothing to do, she is no concern of mine, if my wife have offended your lordship, she shall beg your pardon. Said Mr. Mountford again, I hope your lordship will not vindicate Mr. Hill in any such action as this. With that captain Hill came up and hit Mr. Mountford a box on the ear, and bid him draw. And, said Mr. Mountford, damn ye, What is that for? And thereupon he drew; and I tell you what I saw, they both came off from the paved stones into the middle of the highway, and made two or three passes at one another; at the second pass Mr. Mountford's sword broke, and he flung down his sword, and run away, and said he was a dead man; Mr. Mountford went one way and Mr. Hill another.

L. Mohun. I desire she may be asked, if I did meddle with Mr. Mountford at all, or helped Mr. Hill whilst they fought, and where I stood all the while?

L. H. Stew. What say you? answer all those questions my lord asked you.

Jones. If it please your lordship, he stood upon the causey, the paved stones, in the same place where he was all the time.

L. H. Stew. Did my lord meddle at all?

Jones. No, I did not see my lord Mohun meddle.

L. H. Stew. Was my lord's sword drawn?

Jones. I did not see it drawn.

L. Mohun. I desire she may be asked, Whether I run away, or whether I did not surrender myself to the watch.

Jones. If it please your lordship, I did not see my lord run away; but I did see him surrender himself.

L. Mohun. I desire she may be asked, if she was not examined at Hicks's-hall?

Jones. Yes, my lord, I was.

L. Mohun. And whether she did not there declare the same upon oath, that she doth now?

Jones. Yes, my lord, I did.

L. H. Stew. Have you any thing to say to this witness, Mr. Attorney?

Att. Gen. My lord I would only ask her this question: she saith my lord Mohun was upon the pavement, or causey, as she calleth it, all the while; I desire to know whether the scuffle did not begin upon the pavement?

Jones. Yes, it did upon the causey.

Att. Gen. I desire to know, whether she saw any blood upon that causey the next day?

Jones. No, I saw none.

L. Mohun. I desire she may be asked, Whether they did not fight in the middle of the street?

Jones. Yes, and please your lordship I did see them make passes at one another in the street.

L. Mohun. I desire she may be asked, Whether the sword was not broken there in the middle of the street, and whether Mr. Mountford did not then cry out, I am killed?

Jones. His sword was broken in the middle of the street; but I did not hear Mr. Mountford say he was killed, but he flung down his sword, and run away, and said, I am a dead man.

L. H. Stew. Have you done with this witness, my lord?—L. Mohun. Yes, my lord.

L. H. Stew. Have you any more to say to her, Mr. Attorney?—Att. Gen. No, my lord.

L. H. Stew. Then who is your next witness, my lord Mohun?

L. Mohun. Edward Warrington, my lord. [Who came to the bar.]

L. H. Stew. What say you to him, my lord?

L. Mohun. I desire to ask him where he liveth? Whether he be not a neighbour to Mrs. Bracegirdle? and what he saw that night Mr. Mountford was killed? I desire he would give his whole evidence.

Warrington. I live, if it please your honour, over against Mrs. Bracegirdle's house, at the White-swan, on the other side of the way,

L. Mohun. I desire he would tell all that he saw that night.

Warrington. All that I can say, is, about nine or ten o'clock, as near as I can guess, I heard a disturbance at Mrs. Browne's door, where Mrs. Bracegirdle lodgeth, and looking out, I saw there were two gentlemen talking to old Mrs. Bracegirdle, and Mrs. Bracegirdle and some people went into the house, and when they were gone into the house, I saw the two gentlemen walk about the street, one's sword I saw was drawn.

L. H. Stew. Whose sword was that was drawn?

Warrington. Captain Hill's, as they say; for my part, I did not know either of them; they walked there for the space of an hour and a half, I saw them oppose nobody. But as they came along, I heard them ask a gentleman that came towards them, Whether he would not drink a glass of wine or not?

L. Mohun. My lord, I desire he may be asked, what he saw afterwards of fighting?

Warrington. For fighting, I saw Mr. Mountford come down Norfolk-street, and I saw him turn at the corner with his sword in his hand in the scabbard to the best of my knowledge, and seeing some people there, as I suppose, went towards them, and came up to them; and I saw my lord Mohun to the best of my knowledge, lay his hand upon his shoul-

der, and embraced him, and complimented him; but I cannot be certain what the words were that passed between them.

L. H. Stew. Did you see them fight?

Warrington. If it please your honour, I did see their swords both drawn, Mr. Mountford and he that they said was captain Hill; there were some women about them, so that I could not so well discern when they drew their swords, or who begun the quarrel. Hill, they said, had no scabbard to put his sword in; my lord Mohun stood by, and laid his hand upon Mr. Mountford's shoulder.

L. H. Stew. Was that before the fighting, or at the time of the fighting?

Warrington. It was before their fighting, at their first meeting.

L. Mohun. I desire your lordship would please to ask him, in what part of the street they fought, and whether I was near them then?

Warrington. When first I saw their swords drawn, it was upon the flat stones of the pavement; and I saw Mr. Hill come off of the stones and Mr. Mountford with him. Mr. Hill was, I think, the first, and they came both up together with their swords drawn in their hands, they were not a sword's length off from one another; and they passed at one another, and I run into our house to fetch a paring-shovel, with an intention to part them; but before I could get out of doors with the paring-shovel in my hands, the one was gone one way, and the other the other way; and I saw nobody in the street to ask any questions of, but my lord Mohun at the corner, three or four doors above this place. And I came out, and asked which way they were gone? My lord Mohun turned about, and I was a little afraid of him at first; but, said he, here am I, I did not offer to oppose or draw my sword; you all know it; and immediately, if it please your honour, the watch came in, that is all I know.

L. Mohun. I desire he may be asked, whether I did not go towards the watch, and surrender myself.

Warrington. I cannot say that, but the watch came in a minute. My lord turned about, and said, Here am I, I did not oppose or draw my sword, you all know.

L. Mohun. Pray my lord, let him be asked, whether I did offer to fly? And whether I had not as much time to fly, as Mr. Hill?

Warrington. I cannot say that, my lord. I suppose he might have gone away as well as Mr. Hill, for they were both together.

L. Mohun. My lord, I desire he may be asked another question, Whether, when Mr. Mountford came into Howard-street, he did not come out of his way to his own house, to come towards us?

Warrington. My lord, if it please your honour, it was out of his way; but whether he did it on purpose, or because he saw people there, I cannot tell.

L. Mohun. I desire he may tell you where Mr. Mountford's house is?

Warrington. Mr. Mountford's house is in Norfolk-street, two doors in the corner out of the Cross street; and this was done in Howard-street.

L. H. Stew. I would ask you a short question, whether that was the way to his house that he went?

Warrington. No, it was not the way, my lord; for he turned on the right-hand, and he should have kept straight along.

L. Mohun. I desire he may be asked, whether he was not sworn at Hicks's-hall, and whether he gave not the same evidence there, that he doth now?

Warrington. I was sworn there, and did, to the best of my knowledge, give the same evidence I do now.

L. H. Stew. If I understand you aright, you say both the swords were drawn of Mountford and Hill?

Warrington. Yes, my lord, I did.

L. H. Stew. Can you say whether Mountford's sword was drawn before he was hurt, or not?

Warrington. If it please you, my lord, I cannot tell that, I cannot be positive whether it was or no, for there were women about them, I say, at first, and I could not discern the beginning; and I did not stand to see them push, for as soon as I saw their swords drawn, and they come off the pavement to fight, I run into the house to fetch a paring-shovel.

L. Mohun. Now, my lord, I will call another witness.

L. H. Stew. Mr. Attorney, have you any questions to ask this witness?

Att. Gen. No, my lord.

L. Mohun. Then, my lord, I will call another witness to shew you the reason why Mr. Hill and I stayed in the street, and what was the business we stayed for. I desire Ann Knevit may be examined. (She came to the bar.)

L. H. Stew. What do you ask her, my lord?

L. Mohun. I would ask her where she liveth, and what she knoweth of this business?

Knevit. My lord, I live in Howard-street, exactly against Mrs. Bracegirdle's lodging, and my lord Mohun, as he gave his own name to be, to the watchmen, and another man that they called captain Hill; for so he gave his name to be; they came down with Mrs. Bracegirdle, both the Mrs. Bracegirdles, into the street, and came to their door, and old Mrs. Bracegirdle put her daughter in at the door, and then she stood still and talked with the gentlemen, and asked them their business. They said, they wanted to beg the young woman's pardon for what they had done, and then they would be gone. She said she thought they came to rob her. They said, No, they came upon a very honourable design. She said, then they might have come at a more seasonable time; but she believed they came to rob her.

L. Mohun. What time of night was it?

Knevit. It wanted a quarter of ten, I be-

lieve, or it was about ten, a quarter over or under; I cannot exactly tell. They said, If she would give them leave but to speak to her, and beg her pardon for what they had done, they would go home immediately. She said, She would not, they should not see her any more that night. Then one of the gentlemen, I know not which of them it was, said, they would walk a little while in the street. She did see them walk very quietly, but she made a great noise herself; and at last she went in, and shut the door, and the gentlemen walked quietly up and down; and by and bye they went to the door again, and desired to be admitted to speak with young Mrs. Bracegirdle, that they might beg her pardon for some affront that they had put upon her, I suppose; and she still refused them, and would not let them speak with her; and several times they called and knocked at the door, and still desired but to speak with her, and beg her pardon, and they would be gone home; but she every time refused it.

L. H. Stew. Woman, I do not hear you; you must speak louder.

L. Mohun. My lord, I desire your lordships will let one of the clerks come and take the evidence, and report it to you.

L. H. Stew. If it be material, another must report it; for I have not heard one quarter of it.

L. Mohun. It is very material, my lord, to shew the reason why we stayed there.

Knevit. My lord, I will repeat it over again, if you please.

L. H. Stew. Then pray speak so loud that I may hear.

Knevit. My lord Mohun is a perfect stranger to me, I only tell you what I saw and heard. At the first beginning of all, two gentlemen and two women came to a door over against our door, and at that house Mrs. Bracegirdle and her daughter lodged; the gentlemen gave their names to the watch afterwards to be my lord Mohun and captain Hill. So when they came there, the old woman put her daughter in at the door; and when she had pulled off her hood and scarf, she came to the door, and asked them their business; and they told her, they wanted to beg her daughter's pardon for what they had done; but she abused the gentlemen mightily, and gave them very ill words, and said, She believed they came to rob her daughter; they said, No, they came upon a very honourable design; then she said, they should have come honourably at a seasonable time; they said, it was not an unseasonable time, for she was out of doors herself at that time. So she stood there a little, and then at last she went in-a doors, and shut the door, and some of them opened the door again; and they were walking upon the causey, and came up to the door, and still desired the same thing, to speak with the young gentlewoman to beg her pardon for what they had done, and they would go home for that night. One of them, I think it was

Mr. Hill, said, He had given her an affront, and he desired to beg her pardon; but still they said, he should not be admitted to speak with her. Then one of them, I think it was Mr. Hill, desired she would be pleased to come but to the hatch, that he might see her, and beg her pardon, and he would not desire to come in; but that would not be permitted. So one of them made answer, that they would not stir till they did see her, and they would walk there all night.

L. H. Stew. Cryer, call for silence; and pray, my lord great chamberlain, take some order with those people behind there, for they cannot hear themselves what the witnesses say, and therefore they are resolved we shall not hear them neither. (Proclamation was made for silence.)

L. H. Stew. Now go on, woman.

Knevit. They said they would stay in the street all night, unless they did speak with her: but if she would give them leave to speak with her, they would depart to their own lodgings immediately; but they were denied to be admitted to speak with her. Whereupon one of them called unto his boy, to bring him his cloak; but then he said, he would not have his cloak, he would walk without it, because they had not both of them cloaks: by and bye they sent for a bottle of wine, and there they drank her health, and took several turns; and after they had drunk off the bottle, or some part of it, they went to the door again, and knocked at the door; and somebody answered from within, for they were not at the door, what they would have? They said the same thing as before, that they desired only to see her, and beg her pardon, and they would go home; for it was a very cold night, and it was not convenient to walk there; but they still refused to let them in. By and bye the watch came down, and asked, who was there, and what was their business? And one of the gentlemen made answer, and said, he was a peer, and his name was Mohun; the other said, his name was Hill. So the watch went by, and said no more; but somebody made answer, and said, there was a gentleman had a sweetheart in that street, and he wanted to speak with her. Just at that time, I went up stairs to warm a bed in our house, and whilst I was warming the bed, I heard a little bustle in the street; and running to the window, there I saw a sword in a man's body; I could not tell who the man was, nor who put the sword there; but the man that drew out the sword run away as hard as he could, and the man in whose body the sword was, went as fast as he could the other way. And my lord that gave his name to the watch to be Mohun, stood on the farther side of the street, and said, I have done no hurt to any body, and I will not stir. And there was a woman that called out to the watch to seize him; but who the woman was, I cannot tell; but he stood still between Mrs. Bracegirdle's door and the next neighbour's one that is called Nuttall, I think, and

never stirred till the watch came to him, and the rest went to Mr. Mountford; he said there was no occasion to lay hands upon him, for he would not stir from them.

L. Mohun. I desire to ask her, if Mr. Mountford did not say, I am killed, after the sword was broke?

Knevit. Yes, he did say he was a dead man.

L. H. Stew. What, after his sword was broke?

Knevit. After the sword was drawn out of his body, his sword was in his own hand; I squalled out when I saw the sword in his body, and had like to have gone out of the window; and somebody said to me, when I told them why I cried out, Will you break your neck for that reason? It may be, it is one of the watchmen. No, said I, it is not a watchman.

L. Mohun. I desire she may be asked, where Mr. Mountford and Mr. Hill fought, whether it was not in the middle of the street?

Knevit. My lord, it was exactly in the middle, as near as I can guess, rather on our side of the way, with his arms spread, and his sword in the scabbard.

L. H. Stew. Have you any more to ask th witness?—*L. Mohun.* No, my lord.

L. H. Stew. Have you any thing to say to her, Mr. Attorney?

Att. Gen. I would ask her, where she liveth.

Knevit. I live in Howard-street.

Att. Gen. With whom there?

Knevit. At one Mrs. Brewer's.

Att. Gen. What employment is your mistress?

Knevit. My mistress keepeth a coffee-house.

Att. Gen. Do you live near Mrs. Browne's?

Knevit. I know not any of that name there; but I live over against Mrs. Bracegirdle's lodgings.

Att. Gen. Do not you know the people of that house?

Knevit. No, upon my word, I do not know their names that keep the house.

Att. Gen. Let me ask you another question: You speak of many messages sent backward and forward, and that they said Mrs. Bracegirdle should not be spoken with while my lord staid there; I desire to know, if you can tell who any of the persons were that brought those messages?

Knevit. It was the man that called himself my lord Mohun, and the other that called himself Hill, they spoke themselves.

Att. Gen. But who was it that came to them so often, to tell them they should not speak with her?

Knevit. It was old Mrs. Bracegirdle.

Att. Gen. You are sure of that?

Knevit. Yes, Sir.

Att. Gen. I would ask you one question more: When the watch came up to them, did my lord tell the watch his name was Mohun, or only that he was a peer of England?

Knevit. He said first, he was a peer of the

land, and then he said, his name was Mohun ; and the other said, his name was captain Hill.

Att. Gen. You are sure both of them told their names to the watch?

Knevit. Yes, I am sure I heard them say so.

L. H. Stew. Have you any more witnesses to call, my lord?

L. Mohun. No, my lord ; I could call some as to Sandys's reputation, but I do not think it at all material.

L. H. Stew. Have you any thing, Mr. Attorney, to say to the boy that was set by? Will you have him called again?

Att. Gen. My lord, I did propose that the boy should hear the information read which he gave in to the coroner.

L. H. Stew. Will you have him called again?

Att. Gen. Yes, if your lordships please.

L. H. Stew. Well, then, call him again.

[The Boy came to the bar, and his Deposition before the coroner was shewed to him.]

Att. Gen. Look upon that paper, is that your name or your writing?—*Boy.* Yes.

Att. Gen. Was it true you then swore before the coroner?—*Boy.* Yes, it was true.

L. H. Stew. Read it. [It was taken by the Clerk, and read at the table.]

Clerk of the Crown reads:

Middlesex. The Information of Thomas Leake, Servant to Richard Hill, Gent. taken upon Oath, the twelfth day of December, 1692, before me.

He saith, "That on Friday morning last, about nine o'clock, it was agreed betwixt my lord Mohun and captain Hill, to seize Mrs. Bracegirdle with some soldiers, and carry her away in a coach about nine miles off; and about ten o'clock at night my lord Mohun and captain Hill, with about six soldiers, did seize her, and endeavour to put her into a coach; but she refused to go, and they led her down into Howard-street to her lodging, and then said, they would walk an hour under Mrs. Bracegirdle's window, and another under Mrs. Barry's; and about an hour and an half after, Mr. Mountford came down the street, and Mr. Mountford and my lord Mohun saluted each other; and my lord Mohun said, he hoped Mr. Mountford was not come to vindicate Mrs. Bracegirdle; and Mr. Mountford hoped my lord did not come to vindicate the rudeness done to Mrs. Bracegirdle by Mr. Hill; and then Mr. Hill said, he was able to vindicate himself, and bid Mr. Mountford to draw; and they both pushed at each other with their swords; and my lord said, he would stand by his friend, and Mr. Hill was his friend; and during the time that Mr. Hill and Mr. Mountford fought, my lord Mohun did not endeavour to part them. THOMAS LEAKE."

JO. COOPER, Coroner.

Att. Gen. My lords, as to this last witness, I would desire some of the watch may be asked, because she saith my lord told them his

name was Mohun, and Hill told them his name was Hill, whether it was so or not.

L. H. Stew. Who would you call?

Att. Gen. Merry, my lord, if you please.

L. H. Stew. Call him.

L. Mohun. I desire the constable may be called. [Merry did not presently come in.]

Att. Gen. My lord, I think it is not so material, as to desire your lordships should stay for him. But as to that one witness that entertained your lordships so long, Mrs. Bracegirdle's servant, I desire, that she being here, may give your lordships an account what became of this servant of her's.

Mrs. Bracegirdle. My lord, she went away from me on the Sunday.

L. H. Stew. Who did?

Mrs. Bracegirdle. My maid that was then; and I sent to her aunt's the week after to seek for her, but she could not be found; where she was, I cannot tell; nor could not hear of her from that time to this.

L. Mohun. I desire she may be asked, whether she did not discharge her, or pay her her wages?—*Mrs. Bracegirdle.* I did not.

L. Mohun. Did not you or your mother?

Mrs. Bracegirdle. My mother, my lord, did; she was not my servant, my mother hired her, my lord.

L. H. Stew. What doth she say? Were her wages paid, and she discharged?

Mrs. Bracegirdle. They were paid because she would not stay with me, my lord; I desired her to stay, and she would not; and then she demanded her wages, and my mother paid her.

L. Mohun. My lord, I desire you would ask the maid the reason why she would not stay.

El. Walker. If it please you, my lord, the reason was this. When I came from Hicks's-hall Mrs. Mountford the next day sent for me, and I lying with this Ann Jones that was here, she told me that I should be sent for, and they would rattle me off for my evidence that I had given at Hicks's-hall for the king; my lord, I having such an item from Ann Jones, and they being all players, I was afraid, because players have a worse reputation than other people.

Att. Gen. My lord, we shall not trouble your lordships with any more witnesses.

L. Mohun. My lord, I desire she may be asked if there were not bailiffs sent to take her, and she threatened to be arrested.

L. H. Stew. What say you to that?

El. Walker. If it please you, my lord, I cannot swear it, but I will tell you as near as I can, how it was; I had not time to look over my cloaths, being in haste when I went, and for fear I should have mistaken any thing, the next day I went to look over my cloaths, whereupon I found I had mistook, and taken one of my mistress's aprons, and left one of my own for it, and knowing their great suspicion and inveteracy against me, I went the next day to my uncle's, a porter's, and desired him to carry it to them; but when I had delivered

it to him, he would not let me stay to speak much, for he said there had been three bailiffs to take me, and I having no friends, was much affrighted, and run crying up and down, and did not know where to fly, for fear they might lay me in a prison; and having no friends, therefore I was forced to fly, and so I went to a justice of peace, and there I gave him an account of the business. But he said he must have nothing to do with it, I must go again to proffer my service to my mistress; but I was not willing to proffer my service again to her, so I kept away ever since.

L. H. Stew. If you have done with the evidence on both sides; what have you more to say, my lord?

L. Mohun. My lords, I hope it will be no disadvantage to me, my not summing up my evidence like a lawyer, being a young man; I think I have made it plainly appear that there never was any former quarrel or malice between Mr. Mountford and me; I have also made appear the reason why we staid so long in the street, which was for Mr. Hill to speak with Mrs. Bracegirdle, and ask her pardon, and I staid with him as my friend, so it plainly appeareth I had no hand in killing of Mr. Mountford, and upon the confidence of my own innocency, I surrendered myself, and I commit myself to this honourable house, where I know I shall have all the justice in the world.

L. H. Stew. Has your lordship no more to say?

L. Mohun. No, my lord, but I am innocent of the fact, and leave myself wholly to your lordships.

Sol. Gen. (Sir Thomas Trevor.) May it please your lordships, according to my duty, I am to repeat the evidence to your lordships on the behalf of the king.

My lord, the evidence hath been very long, both that on the part of the king, and that on the part of the prisoner, and I know your lordships have given attention to it with very great diligence. I cannot pretend that my memory will serve me so well, as to repeat the circumstances of this so long evidence; but that which has been material, I shall crave leave shortly to mention to your lordships.

My lords, I know a great many things may slip my notice and repetition, but nothing can slip your lordships observation: so that though I should not lay a due weight upon the evidence for the king, yet your lordships will let nothing pass without giving it its just consideration, and will give judgment according to the exactest justice.

My lords, the evidence for the king doth consist first of facts precedent to the killing of Mr. Mountford, and next what happened at that time.

As to what preceded this fact thus committed, there were two or three witnesses called, and the first of them is Mr. Hudson, the next is Mr. Powell, and they give you an account that Mr. Hill had made his applications in the way of courtship to Mrs. Bracegirdle,

but that he had an apprehension that Mr. Mountford was an obstruction to him in that matter, and therefore he did declare several times, that he would be revenged of him. And one time (which I think was two or three days before the fact was done) my lord Mohun, the prisoner at the bar, was at dinner with Hill, when Hill had this discourse concerning Mountford, and said he would be revenged of him. My lord Mohun was by, they both say, when such discourse was used by Hill, but they cannot tell what notice he took of it.

My lords, after this, the day that this fact was committed, your lordships have heard how my lord Mohun and Hill hired a coach and six horses in order to seize Mrs. Bracegirdle and carry her away by force, and that is proved most fully, both upon my lord Mohun and Hill, that they were both concerned in that design, and actually engaged in it; there can be no dispute of that. Accordingly they dined together that day, and at dinner there arose a discourse in relation to Mrs. Bracegirdle. And at that time my lord Mohun said it would cost Hill 50*l.* to carry her off. And Hill said, if the villain resisted he would stab him. And my lord Mohun said, he would stand by his friend. This declaration was made at dinner, on the day this fact was committed; and then they appointed to meet at the play-house at six o'clock in the evening, expecting Mrs. Bracegirdle would be there; and accordingly the coach was ordered to be ready at that time in Drury lane.

My lords, in pursuance of this design, they both came to the play-house at six o'clock; this is proved by two or three witnesses. When they came there, they inquired for Mrs. Bracegirdle, but she was not there at that time. And then not finding Mrs. Bracegirdle there, your lordships have an account from the coachman, to what places he carried them from thence. First to Drury-lane, there they staid some time; and not finding her there, he drove them into Norfolk-street, near the place where she lodged, and there a man and a woman being discoursing together, gave them occasion to say, they thought they were betrayed. And Hill said, my lord, let us go and cut that fellow's throat, or words to that effect.

Then, my lords, they drove back from that place, into Drury-lane again, and ordered the coach to stop over-against my lord of Clare's house. There it happened that Mrs. Bracegirdle came from Mr. Page's house, where she had supped. At that time there were present her mother, her brother, and Mr. Page, and Mr. Page led her along. Hill came up with seven or eight soldiers, and forced her out of Mr. Page's hand, and endeavoured to thrust her into the coach. In that coach my lord Mohun was, that is agreed upon on all hands, the coach door was open, and my lord Mohun was there in it with seven or eight pistols.

It happening they could not carry her off, but the matter taking air, people came in to their assistance, and the design being prevented,

Hill would needs go home with her to her lodging in Howard street, and my lord came out of the coach and went along with him. When they were come to the lodging, the witnesses tell your lordships, that at that time, when Mr. Page was going into the house, Hill would have had some discourse with Mr. Page, and desired to speak with him, but Mr. Page said it was not a convenient time, but to-morrow would do better, and so went into the house, and the door was locked.

My lord Mohun and Hill continued walking about the streets for about two hours before Mr. Mountford was killed, and now your lordships will observe what transactions there were during the time that they continued walking in the streets.

Then there was an interruption for about a quarter of an hour, occasioned by a lady's falling into fits in one of the galleries; but she being removed, and proclamation made for silence, the Court proceeded.

L. H. Stew. Pray, go on, Sir.

Sol. Gen. My lords, I was observing to your lordships, that part of the evidence which related to what happened after the time that Mrs. Bracegirdle was in her lodging. And, my lord, your lordships hear from the witnesses, that my lord Mohun and this Hill continued in the street, where Mrs. Bracegirdle lodged, and walked up and down for near two hours before Mr. Mountford came.

During that time, the constable and the watchmen have told your lordships upon their oaths, that my lord Mohun's and Mr. Hill's swords were both drawn. And the constable swears expressly, that he asked my lord Mohun what he did with his sword drawn, and that my lord answered, he was ready to put it up, and told him withal, he was a peer of the realm; the constable then asked, why the other gentleman's sword was drawn, and my lord Mohun made answer that his scabbard was lost.

But your lordships observe, that before the watch came, Mrs. Browne (as she herself hath sworn) came out of the house where Mrs. Bracegirdle lodged, and desired to know what they did there, and then Hill said, he should light upon Mountford one time or other; saith Mrs. Browne to him, Why, what hath he done to you? To which he replied, He hath affronted me, and I will be revenged upon him; and this was said in the presence of my lord Mohun, he being just by.

My lords, after this, in a very short time, Mr. Mountford came down, and Mrs. Browne telleth your lordships, that they were so much aware of this matter, that my lord Mohun and Hill staid to do Mountford a mischief, that there were persons sent to Mrs. Mountford to give her notice of it, and she sent messengers to find out her husband, to prevent his coming in their way, but they could not find him.

Upon Mr. Mountford's coming down, Mrs. Browne seeing him, steps up towards him, to

tell him that my lord Mohun and Hill were in the street with their swords drawn, and she was afraid they had some ill design against him; but she sweareth she did not, nor could not tell him this, he was in such haste; but one of the witnesses for my lord contradicts her in this, and says, that she did tell him; but whether the one witness sweareth true, or the other witness saith true, must be left to your lordships judgment.

But Mr. Mountford came down immediately, and as he came down he met my lord Mohun, and they did salute one another (for I would not injure my lord in mistaking the evidence, as near as I can) but your lordships will observe, the witnesses say, that presently my lord Mohun asked Mr. Mountford, whether he was not sent for, and said, I suppose you have heard what happened to the lady this night, and I hope you do not come to vindicate Mrs. Bracegirdle. And Mr. Mountford replied, I hope your lordship doth not come to vindicate Mr. Hill in such an action.

Thereupon Hill stepped up, and struck Mr. Mountford a box on the ear, and at the same time, with his right hand, passed at him, and run him through, before his sword was drawn. This two of the witnesses for the king say Mr. Mountford told them upon his death-bed, and it was very probably so; because your lordships observe by all the evidence, Hill's sword was ready drawn in his hand.

[There being some noise, proclamation was made for silence.]

Sol. Gen. My lords, I was observing that it was immediately, and at the same time that he struck him, and run him through, and it is very likely it was so, as Mr. Mountford said when dying; for several of the witnesses for the king do swear, that the box on the ear was before his sword was drawn, and Hill's sword was ready in his hand. So Mr. Mountford said when he was expiring, and what regard your lordships will have to the declaration of a dying man, we must submit to your lordships judgment; and Mrs. Browne, who was there and saw the fact, sweareth the same thing, that it was done before Mr. Mountford could have time to draw his sword.

If that be so, it is very plain it was murder in Mr. Hill, and your lordships will please to observe another piece of evidence that came from the mouth of a witness, examined for the noble lord the prisoner at the bar, and that is Leake the boy, he was examined before the coroner; indeed he was not called now for the king, and your lordships may see some reason why he was not; but your lordships have had his deposition before the coroner read, and by that your lordships may observe, how different his testimony then was, from what he now giveth. And whether your lordships will believe what he then said upon his oath, or what he now saith, is left to your lordships consideration. He saith, when he was examined upon his oath, soon after the fact, that my lord

Mohun was by when Hill did wound Mountford, and that my lord Mohun said, that he would stand by his friend, and that Hill was his friend, and that my lord Mohun did stand by, and did not offer to part them. Though he hath something varied from this in his testimony now, yet he still affirms what he there swore to be true.

But further, my lords, your lordships will consider what the constable swore my lord Mohun said after he was taken, and when he was in custody at the round-house. Whether he did surrender himself or no, we must leave to your lordships, upon the evidence that hath been given on the one side, and on the other. But when he was in custody (as I said) my lord Mohun asked whether Hill was taken, and being answered, No, he said he was glad of that; but he was sorry he had no more money about him, and wished that he had that money which he himself had, and that he would be willing to be hanged for him. So great a kindness he expressed for Hill, and said, he had changed coats with him, and then had Hill's coat on his back.

This, my lords, is the substance of the evidence on the king's part, and upon the whole of it, it is plain, with humble submission to your lordships, that here was a premeditated malice in Hill, by his own declarations preceding, by what was done at the time of the fact committed, and by stabbing him before his sword was drawn.

The question will be, whether my lord Mohun, the prisoner at the bar, was privy to this design of Hill's, and did so far agree in it, as to keep him company to assist and encourage him. For if he was privy, and knew of Hill's design, and staid there for that purpose to give him assistance in it, with humble submission to your lordships' judgment, he will be as much guilty of the murder, as Hill that actually killed him: that therefore will be the question before your lordships, for your judgment upon the consideration of what has been proved in this case.

My lords, the prisoner, my lord Mohun, has called and produced several witnesses to your lordships, in defence of himself. The first witness was called to this purpose, to shew that my lord had no malice to Mountford, but that they were very good friends but two or three days before; that he spoke of him with a great deal of kindness, and desired to drink a bottle of wine with him.

Now for this, I would observe to your lordships, that it is not the question, whether my lord Mohun had any direct or express malice against Mountford; but if Hill, who is so great a friend of my lord Mohun's, had a malice against Mountford, and my lord Mohun had so great a kindness for Hill, as to accompany and assist him in taking his intended revenge (whether it was so or no, your lordships are to judge) it will be as much murder in law, as if my lord had himself had a hand in it.

For the other witnesses that have been called

for the prisoner, I must leave the consideration of what they say to your lordships. They are not upon their oaths, but yet they are to be believed so far, as your lordships shall judge what they say credible, upon consideration of all that you have heard. But for the boy, who hath contradicted his own evidence, which he gave upon oath before the proper officer, but acknowledgeth what he swore then was true, what credit is to be given to him, will deserve your lordships particular consideration. How he has been prevailed upon to change his evidence, I cannot tell, nor what weight it will have with you.

My lords, I will not spend more of your lordships time; I know you very well remember, and will carefully recollect all the evidence, both for the king and for the prisoner, and your lordships will consider that it is a case of blood, and if your lordships think him guilty, though he be one of your own body, you will adjudge him so; if not, you will acquit him; and therefore I leave the matter to your lordships just determination.

L. H. Stew. My lords, I think now, having heard the evidence on all sides, your lordships will think fit to adjourn to the House of Lords. Is it your pleasure to adjourn?

Lords. Ay, ay.

L. H. Stew. This House is adjourned to the House of Lords.

Then the Lords returned to their own House, in the same order as they came into the court.

After some debate amongst themselves in their own House, they adjourned till the next day, and ordered the Prisoner, Counsel, and Witnesses to attend in the Court.

WEDNESDAY, February 1, 1693.

The Lords sate all day in their own House, debating amongst themselves in the absence of the Judges, who were in the Court, and about eight o'clock in the evening, the House of Lords adjourned till the Friday following, the Thursday being Candlemas-day, and no law day. And the Prisoner, Counsel, and Witnesses were ordered to attend in the Court on Friday morning.

FRIDAY, February 3.

About the hour of four in the afternoon, the Lords (who had till then been debating amongst themselves in their own House) came in the same order as the first day into the court of Westminster-hall, except only that the Judges were a great part of the day waiting for them in the court.

The Lords being seated on their proper benches, and his grace the Lord High Steward in the chair before the throne, proclamations were made for silence, and for the bringing the prisoner to the bar in the usual manner; and the prisoner coming to the bar, and having saluted his grace the lord high steward, and the peers,

and being re-saluted by them, the court proceeded in this manner :

L. H. Stew. My lord Mohun, My lords have heard the evidence on both sides, for and against you ; and upon that evidence some Questions have arisen in point of law, in which some of my lords are doubtful. I am therefore by their lordships command to propose to your lordships, my Lords Chief Justices and the rest of the Judges here, to have your Opinions upon a case stated by their lordships ; and it is this :

‘ In a Case where a man shall murder another, Whether all those that are in his company at the time of the murder, are so necessarily involved in the said crime, that they may not be separated from the crime of the said person, so as in some cases to be found guilty of manslaughter ?’*

To this, my lords expect you, the Judges, should give your Resolutions severally one after another, and therefore it is to begin with you, my lord chief justice.

L. C. J. Holt. My lord, the question is pretty long ; and I desire, that I may not be mistaken in the opinion I shall give, that I may have it in writing, and that I may have a little time to consider it, because it hath been a question framed upon very great consideration and deliberation : therefore I would be very well advised before I give an Answer to such a question, because it is of so great importance.

L. H. Stew. You must speak out, my lords ; for else I am at such a distance that I cannot hear a word you say.

L. C. J. Treby. My lords, I make the same humble request : the Question propounded is long, and the fruit of great deliberation among your lordships : I desire therefore my Answer may be such as becometh me to it, and to that purpose, that I may have a copy of it, and some time to consider of it.

L. H. Stew. I have it here in writing, and will give it you, if that will serve the turn.

The Paper was brought by the Black Rod from his grace to the Judges.

L. C. J. Holt. My lord, we desire your lordships will give us time to withdraw, and consider of it among ourselves.

L. H. Stew. Your lordships hear the motion of my Lord Chief Justice ; the Judges desire your leave to withdraw, and consider of the question among themselves.

Lords. No, no, no.

Then the Judges sitting upon the wool-packs conferred for a little time privately with one another ; and then the earl of Rochester stood up.

E. of Rochester. My lords.

L. H. Stew. My lord of Rochester, What say you ?

E. of Rochester. My lords, the prisoner doth desire to have a copy of this Question, it being a question in point of law, that his counsel may see it.

Lords. Ay, ay, he ought to have it.

A copy was carried by one of the clerks to the bar, and delivered to the prisoner, and he gave it to sir Thomas Powis, who, with Mr. Hawles and Mr. Price, before assigned of council for my lord Mohun in matters of law, stood by him at the bar.

L. Mohun. My lords, I desire to know whether my counsel may speak to this case before the Judges give their Opinions, it being a matter of law, and the judges superior to my counsel ?

L. H. Stew. My lord, they may be heard to any matter of law that is law singly, the counsel of either side may be heard to any thing that is a point of law only.

L. Mohun. My lord, I conceive this to be so.

L. H. Stew. My lord, it is agreed to be so ; but, my lords, I must desire your lordships leave to go down to the wool-pack, or I shall not be able to hear what is said.

Lords. Ay, ay.

Then his grace came down and seated himself on the wool-pack.

Sir T. Powis. May it please your lordships, I am of counsel—

E. of Devonshire. My lords.

L. H. Stew. My lord Devonshire.

E. of Devonshire. I think your lordships have not yet resolved that the prisoner's counsel shall be heard before the judges ; therefore I desire they may not begin.

Lords. Yes, yes, it was agreed above.

L. H. Stew. My lords, it must be either then, or not at all ; and I understand the resolution of the house to be so.—*Lords.* Ay, ay.

L. H. Stew. Go on, Sir.

Sir T. Powis. May it please your lordships, I am of counsel assigned by your lordships for this noble peer that is now a prisoner at the bar : The question your lordships are pleased to propound is this :

‘ In a case where a man shall murder another, Whether all those who are in his company at the time of the murder, are so necessarily involved in the same crime, that they may not be separated from the crime of the said person, so as in some cases to be found guilty only of manslaughter ?’

My lords, with humble submission to your lordships, I take it there are many cases where a person that is present when a murder is committed by another man, shall be equally guilty of that murder ; and there are many cases where a person that is present when a murder is committed by another man, shall be guilty only of manslaughter ; and there are many cases where a person that is present when a murder is committed by another man,

* See East's Pleas of the Crown, c. 5, sec. 135, and the books there cited.

shall not (with humble submission) be guilty of any crime at all.

For the first, there is no question but if two persons or more do meet together with malice prepensed to kill another, and one of them killeth him, and the rest do aid and assist him in doing of it, though the mortal wound is only given by one, there is no question but they are all equally guilty of the murder, with him that gave the mortal wound: And it is also as clear, if two persons meet together to commit an unlawful act, and during the execution of that unlawful act, one of them doth kill another man, the other will be involved in the guilt of it.

But, my lords, if several persons do meet together to commit an unlawful act, and the design of the act is totally over, so that the prosecution of it is quite left off—

There being some noise and disorder about the court, proclamation was commanded to be made, and was made again for silence.

Sir T. Powis. My lords, I say in the second instance that I was offering to your lordships; If two persons or more meet together to do an unlawful act, but are either disappointed in it, or have totally desisted from it; and afterwards these same persons having quitted their design, are together, and a third person coming into their company, though there were malice between one of those persons and that third person, and upon words, or some other occasion or accident, there should be quarrelling and fighting between those two persons that bore malice to one another, and one of them is killed, and he that before had joined in the design of committing an unlawful act, be only there in the company, if he doth neither aid nor abet, nor any ways agree to the doing of the thing, the authorities are, it will neither be murder nor manslaughter; and of this I would, with your lordships' favour, put some instances.

If two persons agree together (as the case is put in that which goeth by the name of my lord Dacres' case) to enter into another man's park and steal his deer, this is an unlawful design; and if one of them kill the keeper, and the other no way at all act in the doing of it, yet it will be murder in the person that did go along with that other in that unlawful act: But the lord Dacres' case was accompanied with further circumstances; for there it did appear that the lord Dacres' had agreed before hand to kill any person that should oppose them; there was that particular circumstance in that case.

But, my lords, I take it, with submission, to be very clear, that if two such persons who made such an attempt to rob or steal deer in a park, should be disappointed, and should leave the park, and afterwards go to a tavern, or an ale house, or any place to drink, having quitted that design, and some hours afterwards, a person cometh in that was not expected, or thought of, and a quarrel ariseth between one of those two persons who were before together and the man that so came in, and he shall be

killed, I take it that the other person who was present will not be guilty of the murder, unless he aided, or assisted, or acted in it.

My lords, I would speak to your lordships in a case of this nature with as good authority as I could, besides my own poor reason to prove to your lordships that there may be many cases where a person may be present at the time when another is murdered, and yet he shall be guilty of only manslaughter, and in some cases shall be guilty of no crime at all.

The case that I shall cite is out of a treatise of a very great and very learned man: it is the book that goeth under the name of sir Matthew Hale's Pleas of the Crown: the case is this: You will find in that book under the title of murder, fol. 51. If A. and B. having malice prepense, meet and fight, and C. the servant of A. not acquainted therewith, take part with A. his master, and kill B. this is murder in A. but only manslaughter in C. So here is an instance where one is guilty of murder, and the other only guilty of manslaughter, when both are present at the time of the fact committed. The same law, saith he, it is, if C. came in suddenly, and took part with A. and killed B. In this case it is murder in A. if there was malice prepensed between him and B. but only manslaughter in C. who came in suddenly, and actually killed B.

My lords, he goeth further, and saith, If one come by chance where one is killed, and doth not abet, he is neither principal nor accessory to that murder or manslaughter; so that here are cases where it is murder in one, and manslaughter only in the other, and here are cases where it is murder in one, and not so much as manslaughter, or any crime at all, in the other.

These that I have cited are cases where one has malice against another, and he that joineth in the quarrel doth not know it. But I will put the case now, That a person hath malice against another, and one happeneth to be in his company that knoweth he hath malice against that other person; if those two that had malice against one another, do fight, and the one kill the other, yet he that is present will not be guilty of murder or manslaughter. For if the law should be, that men are involved in the guilt of murder whenever they are present at a time when one that beareth malice against another killeth his enemy, conversation in the world would be very dangerous: For, my lords, we know the world is too full of malice, and there are few men but have acquaintance with such as bear malice to others; but if to be that no man that is acquainted with one that bears malice to another, may be in his company but at the peril of his life; if his enemy come in his way, and he happen to kill him in his presence, then no man that is ever so innocent can be safe.

For I would put this case to your lordships: I am walking with a friend, or an acquaintance that I know hath malice against another, and that other man cometh in the way, and they

fight, and my friend killeth that other man, and I am no way aiding or assisting in it; if that should involve me in the crime, surely the law of England would be the most unreasonable and dangerous law to live under in the world. No doubt but in such a case the person that is so present is unfortunate, but he is innocent, is not guilty.

For to make one guilty of murder where murder is committed, it must be either that he doth aid or abet, or some way assist in the killing of the man, or he must have before that time agreed and confederated with the person that killed him, that he would join therein at that time, and he must be there for that end and purpose: for if he never engaged or agreed to the killing of him, nor was there for that purpose, nor at the time did any way act, or join, or assist, in the doing of it; in those cases he is certainly not guilty.

My lords, I dare not apply any of these things to the present case, because I suppose your lordships only propounded this as a question of law, and not of fact; your lordships are the great judges both of the one and the other, but what in the argument or resolution of this case, your lordships will find agreeable to the present case of my lord now before you, I submit to your lordships judgment.

Mr. Hawles. My lords, I will not repeat what has been offered; the distinction is certainly true that has been made, that there are cases and instances in law where a man may be guilty of murder, when he is present where murder is committed, and he may be guilty of manslaughter only, where another is guilty of murder; and a man may be present where murder is committed, and be innocent both of the one and the other. But this I do venture to say, that there is no authority in our law, that saith a person present, when a murder is committed, must be guilty either of murder or manslaughter, it must be according to the circumstances of the thing, either that he intended to aid or assist in the killing, when he was there by agreement before hand, or must actually aid or assist by some action or encouragement.

But, with submission, the authority of law is very plain upon this question proposed by your lordships, That one person may be guilty of manslaughter, and another of murder at the same time. The case that hath been put out of my lord Hales, was upon his account, authority sufficient to quote, if we would only rely on him: but, my lords, with submission the authority goeth a little higher yet; Stamford putteth the question before the justices; A. that is, the master, fighteth with B. and C. the servant taketh part with his master, and killeth B. A. is guilty of murder, and C. only of manslaughter.

And that authority is followed afterwards in the case of Salisbury, in Plowd. Com. fol. 100. B. with the Resolution of all the judges in that case, That one man may be found guilty of murder, and another of manslaughter, as to

the same fact; and Stamford doth expressly say, as my lord chief justice Hales quotes it out of him, that if a man be present, but do not abet or assist, or contribute to the thing, he is totally innocent, and neither principal nor accessory to the murder or manslaughter.

My lords, we do not find that our law hath any way prohibited a man to keep company with one that oweth another a spleen; sure there should be some warning given about it, if that was the law in such a case. The law goeth no farther than to caution a man, that he take care he doth not break the law himself, that he doth not transgress the bounds set him by the law.

And it were a very hard case upon a private person, if it should be otherwise; for no law compelleth a private person to part two that are fighting; if he doth attempt it, he doth it at his own peril, as to that case of A. the master fighting with B. and C. the servant taking part with his master to part them, if B. be killed, C. is guilty of manslaughter, though his design was only to part them, because the law putteth it not upon a private person to do it; if it did, the law would protect him for what he did in obedience to it.

The law is otherwise in the case of a magistrate, or a constable, who endeavoureth to part any persons fighting, and to keep the peace; if he happen so to kill a man, he is totally innocent; but a private person shall answer for it.

My lords, I will not trouble your lordships further; I hope it is plain, that malice is absolutely necessary to make a man guilty of murder, and there is no such thing in this case stated by your lordships; and therefore I submit the matter to your judgment.

Mr. Price. My lords, I am of counsel for this noble and young lord, the prisoner at the bar: I shall not trouble your lordships so far as to make any repetition of what has been said by those gentlemen that went before me.

But there was a case in Plowden that was cited by Mr. Hawles, by the name of Salisbury's Case; and I would crave leave to cite the case that is next precedent; it is in that book, fol. 98. There, my lords, was an indictment for murder against several, and among the rest, against two, one for giving the wound, and the stroke, and the other for being present, and aiding the other; and they tell you how he was an aider and abettor because he was present, and put the man upon whom the assault was made in terror, which terror was the occasion that he could not defend his life; and made him full as much a principal as the other that gave him his death's wound. And there, my lords, he citeth another ancient record, which is Quarto Libro Assisarum Placito 25. of an appeal of murder by a woman for the death of her husband against sixteen; four whereof were principals, and the other accessories, where the words are Presence, Force and Aid.

How that will come up to this case now before your lordships, I am not to trouble you

with the consideration of, you who have heard the evidence are best able to judge of it.

My lords, by the same reason and rule that one man may be found guilty of murder, and another of manslaughter; one may be found guilty, and the other not guilty. As for example, if A. commandeth B. to kill C. and afterwards it repenteth him of this command, and he countermandeth it; yet notwithstanding B. doth kill C. now B. that killed C. is guilty of murder; but A. that countermanded it, is not guilty as accessory; for his malicious intent did not continue till the murdering stroke was given, and to make murder, there must be a continuing malice till the mortal wound given. Cases to this purpose many might be cited; but for a full authority there is my lord Coke in his Pleas of the Crown, fol. 51.

My lords, I have no more to say, but that by the same rule, that one may be found guilty of murder, and another of manslaughter for the same fact, by the same rule, (as circumstances may be,) the one may be found guilty of murder, and the other not guilty at all.

L. H. Stew. Have you any more to say that are of counsel for the prisoner?

Sir Tho. Powis. No, my lord, I have nothing further to offer to your lordships.

L. H. Stew. Have those who are of counsel for the king any thing to reply to this that is said by the counsel for the prisoner?

Att. Gen. May it please your lordships, the question that is proposed, is this:

‘ In a case where a man shall murder another, Whether those who are in his company at the time of the murder, are so necessarily involved in the said crime that they may not be separated from the crime of the said person, so as in some cases to be found guilty only of manslaughter?’

My lords, that which, with all submission, we would offer to your lordships, is this: we are intrusted by their majesties, to prosecute for the death of one of their subjects; there hath been a case stated to your lordships by the evidence which hath been given before you; that which is mentioned in this paper has nothing certain in it; we are to imagine a case, and suppose facts, and then to argue what will be the law upon those facts supposed. When your lordships are pleased to let us know what it is which your lordships take to be the fact of the case before you, we shall be ready to speak to the law upon that case, as it becomes us, and as is our duty to do; but till the fact be so stated by your lordships, and declared to be that which your lordships take to be the fact of my lord Mohun's case, we think it not consistent with our duty to enter into a debate upon supposals, or upon other cases than that which is in judgment before your lordships.

L. H. Stew. Will your lordships then please that the judges give their opinion?

Sol. Gen. My lords, not to trouble your

lordships with any repetition of what hath been said, it is my opinion, as Mr. Attorney General has declared his, that, as this case is stated, we are bound not to give any answer to it, unless your lordships will please to tell us what the case is upon the evidence that hath been given before you.

Serj. Thompson. My lords, I desire to be heard one word in this case. I take it for granted, that your lordships here are judges both of fact and law in this case, and you are so entirely judges of it, that nobody can interpose in giving their opinions in relation to your judgments, what the fact is, and from the fact the law ariseth. We, that are of counsel for the king, must needs prejudice him as to the evidence of the fact that we have given, except we argue that which is the fact of this particular case, and the law arising thereupon together; which is not necessary here, where your lordships are judges of both; and since you are better judges of them than any one else can be, therefore we do not think it our duty to argue upon a case put *ad dextra*, and *obitur*; and hope your lordships will excuse us from answering what hath been said by the counsel for the prisoner; though I think it might be easily answered in every point; but I shall not enter upon the debating of it. For your lordships see what caution we ought to have in relation to our duty to the government, which your lordships will always expect we should perform as exactly as we can. When the fact that hath been proved in this case is stated, your lordships then are the proper judges what it amounteth to in point of law, or if your lordships desire that counsel should argue it, we shall be ready to do it.

L. H. Stew. Then my lords the judges, what say you to it? My lords here expect your opinion in this case.

L. C. J. Holt. If your lordships please, I will repeat the question; which is this:

‘ In a case where a man shall murder another, Whether those who are in his company are so necessarily involved in the said crime, that they may not be separated from the crime of the said person, so as in some cases to be found guilty only of manslaughter?’

My lords, I shall not inlarge upon the matter, but humbly offer my opinion to your lordships as generally to the question. I am of opinion, that the crime of those who are in the company at the time of the murder committed, may be so separated from the crime of the person that committeth the murder, as in some cases they are only to be found guilty of manslaughter. I suppose your lordships do not expect that I should argue the case, or explain my opinion upon so general a question, by particular instances, or run into a consideration of the different cases that may be put upon it, therefore I only deliver this as my opinion.

L. C. J. Treby. May it please your lord-

ships, I am of the same opinion; I think the import of your lordships question is, Whether there may be a case in which it is possible that one person who is in the company of another at the time that he committed murder, may be guilty of manslaughter; and, my lords, I think a case may fall out, and may be so circumstanced, as that it may be possible, that he who did accompany the murderer, may be guilty only of manslaughter. Your lordships only expect our opinion, and therefore I will not go about to argue it.

Just. *Nevil*. My lords, I shall not spend your time to repeat the question, it hath been so often repeated; but I am of the same opinion with my lords chief justices: I must concur with them in it, that there may possibly be such a case, as that when murder is committed where others are in company, he that doth the thing will be guilty of murder, and those that were in company, guilty but of manslaughter. There may be such a case.

Earl of *Carlisle*. My lords, to save your lordships time, unless the rest of the judges differ from those that have spoken their opinion, I think you need not trouble them to speak to it severally.

Baron *Turton*. We are all of the same opinion, my lords: we cannot differ in opinion upon such a case.

Earl of *Monmouth*. My lords, I humbly beg your lordships leave to propose a question to my lords the judges for their opinions.

Lords. Ay, ay.

L. H. *Stew*. What is your question, my lord of Monmouth?

Earl of *Monmouth*. My lords, the question is this:

‘A, conscious of an animosity between B and C, A accompanieth B where C happeneth to come, and B killeth him; whether A, without any malice to C, or any actual hand in his death, be guilty of murder?’

L. H. *Stew*. Pray, my lord, be pleased to hand up your paper, that my lords the judges may see it.—

Earl of *Mulgrave*. My lords—

L. H. *Stew*. What saith your lordship, my lord of Mulgrave?

Earl of *Mulgrave*. I only desire, that the prisoner at the bar, if he hath a mind to it, may have his counsel speak to this question, before the judges answer it, as was done in the other case.

L. *Mohun*. I desire, my lords, my counsel may have the question in writing.

L. H. *Stew*. Make my lord a copy of it.

One copy was delivered by the clerk to the prisoner, and by him to his counsel, and another to the king's counsel; and the original was delivered to the judges.

L. *Mohun*. Is it your lordships pleasure that my counsel may be heard to this question?

Lords. Ay, Ay.

Sir T. *Powis*. My lords, the question that

this noble peer hath been pleased to propose, is this:

‘A, conscious of an animosity between B and C, A accompanieth B where C happeneth to come, and B killeth him; whether A, without any malice to C, or any actual hand in his death, be guilty of murder?’

My lords, with humble submission to your lordships, I take it in this case the law is very clear, That as this case is put, he that was in company when the murder was committed, under these circumstances, is not guilty of any crime: But without question he is not guilty of murder.

My lords, malice is so absolutely necessary to murder, either express, or that which the law calleth malice implied, that there can be no case where murder can be committed without it; no indictment can ever be good, unless, ‘Ex malitia sua precogitata,’ be alledged in it; because this is absolutely essential to murder.

But, my lord, if so be a man that is present, not designing, or foreseeing that unhappy accident that doth fall out between his friend with whom he is in company and another person that came accidentally to them, though malice was between those two, God forbid he should be guilty, if he did neither foresee it, nor any way acted in it.

He that is present must be involved in the crime, either by some way aiding, abetting, or contributing to the death of the man, or there must be some precedent combination and agreement to do that act which at that time was done; and that must be plainly and clearly proved: For his acting, his standing by innocently and harmlessly, is so great an evidence of his not concurring, that it must be a mighty proof of malice that must convict that man of a preceding agreement to do the fact; and if it doth not appear plainly and manifestly, that he agreed before-hand, or acted then, and abetted and contributed to the thing; I say, unless this be clear and manifest, it is no question, but in law he is innocent of the murder.

For in such a case it is plain he never had prepensed malice express, nor is there any evidence of that which the law calleth malice implied; which is when a man killeth another without provocation, that is, when he that doth the act had no provocation, or killeth an officer in the prosecution of his office, that the law calleth malice implied. But then that is never but in the person that did the act, and not in the persons who were present at that time, unless before-hand they had agreed to do that act; and therefore they cannot be guilty of murder.

And this, my lords, is what I humbly offer to your lordships' consideration, in relation to the case put by that noble lord.

Mr. *Hawles*. Will your lordships please to favour me with a word on the same side with sir Thomas Powis, and I shall be very short in the matter.

The king's counsel did complain that the last case was not fully stated, and therefore they could not speak to it; my lords, with submission, this case is fully stated: there was nothing in the other case said of malice between him that was murdered, and him that killed him; but here it is said, that the person present was not conscious of any malice, nor had any manner of hand in the doing of it: And then, with submission, my lords, upon the question, whether he was not guilty of murder? If this was a special verdict found by twelve men, and referred to the judges, I do not at all doubt but their judgment would be, that he was not guilty. For though in a special verdict, where malice is not found, the prisoner would be acquitted; yet if it be expressly found in the verdict that he did not know of any malice between them, then, with submission, there would be no colour to find him guilty of any thing.

A Lord interrupted him, and said, The case was put of one conscious of the malice.

Mr. Hawles. My lords, I beg your pardon, I confess it is so, I did mistake it; but, with submission, that will not much alter the matter. If he was conscious, that will not make him guilty; for that consciousness of his is no matter of crime: if he did not act any thing, or agree to do any thing before-hand, but only was in company with the person that had malice against another, that will not make him guilty of any crime whatsoever.

Mr. Price. My lords, I shall speak but one word to it; I observe the great stress of the case lieth upon the word being 'conscious' of the malice between B and C. Now as to that, with submission, I conceive, and am of opinion, that as this case is, A is not guilty of murder, and for authority, I shall rely upon the cases in Stamford's Pleas of the Crown, fol. 40, and my lord Coke's Pleas of the Crown, fol. 51. The case is this, If a man happen to be in company where murder is committed, or felony, and he cometh not there on purpose, or by confederacy to do it, in that case, though murder be committed, and he doth not endeavour to part them, this is no murder in him, for he is punishable by fine and imprisonment, if not an infant; but if he was an infant, he is not punishable at all, for he is not conscious of the law in such a case. But in this case, except malice prepensed, express, or implied, be proved, without doing any thing or abetting, he is not guilty of murder.

L. H. Stew. Gentlemen, you that are of the king's counsel, have you any thing to say to this question?

Att. Gen. My lords, here is a case put which I hear from the counsel on the other side, is certainly enough stated. My lords, if this be stated to us, as that which is agreed to be the fact of the present case, we are ready to speak to it; but if this be not taken by your lordships to be my lord Mobun's case, and as such stated to us, then we must humbly beg to be excused. I know your lordships will be

VOL. XII.

tender in this matter, and as well pleased that we hold to that which we conceive to be our duty in reference to that station in which we serve the king, as with any forwardness in us to answer questions: and therefore we beg your lordships' excuse for saying nothing more to it.

Earl of Monmouth. My lords, I did not propose it as a case stated and agreed by your lordships, it is only a case particularly stated for my own satisfaction.

Earl of Mulgrave. My lords—

L. H. Stew. My lord of Mulgrave.

Earl of Mulgrave. If your grace please, let the king's counsel know, that they are not to ask you the question, Whether the Lords are agreed what the case is? They are to answer such questions as are proposed, and not to ask any such question.

Att. Gen. My lords, with that noble lord's pardon, I did not ask any question; all that I said was, That when a case is agreed to, and stated by your lordships to be the present case, we would be ready to speak to it, and till we receive that intimation from your grace, we shall think ourselves excused from giving any answer to other questions.

L. H. Stew. My lords, I think we must go on, and if any lord has any more questions to propose, he may propose them.

E. of Nottingham. My lords—

L. H. Stew. My lord of Nottingham.

E. of Nottingham. Your lordships will not certainly require of the king's counsel to answer any questions that they think improper for them to speak to; but when a question hath been proposed by any noble lord, to which the counsel for the prisoner hath been heard, and the king's counsel think not fit to speak to it, there is nothing more requisite, but that in the presence of the prisoner (as the law requireth it should be) you do demand the opinion of the Judges.

L. H. Stew. What say you to it, my Lord Chief Justice?

L. C. J. Holt. If your lordships please, I will repeat the question:

'A, conscious of an animosity between B and C, A accompanieth B where C happeneth to come, and B killeth him; Whether A, without any malice to C, or any actual hand in his death, be guilty of murder?'

And, my lords, as this case is stated, I do conceive, that A is not guilty of the murder, for it appeareth the meeting was casual, and there was no design in A against C, and therefore though A did know of the malice between B and C, yet it was not unlawful for A to keep company with B, but he might go with him any where, if it was not upon a design against C.

Therefore I take it as this case is put, that C came accidentally into the company where A and B were, and then, without any design in A, B killeth C. This is not murder, indeed no offence in A.

3 U

L. C. J. Treby. If it please your lordships, as this case is put, I think it is not an offence of murder or manslaughter in A; it dependeth upon the words, as the last question did. For the former question was put generally, Whether there might not be a case found or framed, wherein one might be guilty of murder, and the other of manslaughter? So here it dependeth upon the word 'happeneth,' which I take to signify (as my lord doth) a casual coming into, or being in the company.

Now, my lords, when B had communicated to A this malicious purpose to kill C, it stood uncertain, whether he to whom B had communicated it did consent; if he had any way declared his consent, that he would go to such a place, and stay there with B for such a purpose, then it had been murder in both; but if he merely was silent, and only kept B company, perhaps with an intent to dissuade him from it, or possibly without any consideration at all, and then the person intended to be killed accidentally came by, and is killed by B, A doing nothing towards it: in that case it is neither murder nor manslaughter in A.

Just. Nevil. My lords, as this case is, it seemeth to be mere accidental the coming of C into their company, for it is said, 'happeneth to come;' and so though A did know that there was an animosity between B and C, yet declaring no intent of going with B to that purpose, but coming with B into a place where C accidentally came or happened to be, between whom and B there is a quarrel, and C is killed; I do not take it at all that A is concerned, but merely as any other person that accidentally was there, and in that case he cannot be guilty of murder or manslaughter, or any other crime.

E. of Devonshire. My lords—

L. H. Stew. My lord Devonshire.

E. of Devon. If the rest are of the same opinion you need not give them any farther trouble, I think.

Judges. We are of the same opinion.

E. of Scarborough. My lords—

L. H. Stew. My lord of Scarborough.

E. of Scarborough. I humbly beg your lordships leave, that I may offer a question to your lordships, to be proposed to the judges, and the question is this:

'Whether if A heard B threaten to kill C,
'and some days after A shall be with B
'upon some other design, where C shall
'pass by, or come in the place where A
'and B are, and C shall be killed by B;
'A standing by without contributing to
'the fact, his sword not then being drawn,
'or any malice ever appearing on A's part
'against C; whether A will be guilty of
'the murder of C?'

L. H. Stew. Pray, my lord, give your paper to the clerk. [Which was done.]

L. H. Stew. My lord Mohun, doth your lordship desire that your counsel may have a copy of this question, and be heard to it?

L. Mohun. Yes, my lord, if you please.

Then a copy was given to them for his counsel, and another to the king's counsel, and a third the judges had.

Sir Tho. Powys. Will your lordships please to favour me with a few words, and I shall trouble your lordships very little, because I have said that already to your lordships which will be an answer to a good part of this case: the case is this:

'Whether if A heard B threaten to kill C,
'and some days after A shall be with B
'upon some other design, where C shall
'pass by, or come in the place where A and
'B are, and C shall be killed by B; A
'standing by without contributing to the
'fact, his sword not then being drawn, or
'any malice ever appearing on A's part
'against C; whether A will be guilty
'of the murder of C?'

My lord, with humble submission, we do take it, that the law in this case is likewise very clear, that A is not guilty of murder: for as this case is put, there doth not appear (nay, the contrary doth appear) that he had any manner of malice to this man that was killed, nor any hand in killing of him: and, as I said before to your lordships, (and I hope the judges will verify us in that, and your lordships will be of the same opinion) there can be no case wherein a man shall be guilty of murder, but where there is malice against the person so murdered, or some way abetting and assisting in the killing of him, or what the law calleth 'implied malice.'

But in this case that is now put, there is neither express malice, but the contrary appearing, nor any implied malice, which is by construction of law; the person that was by, and heard B threaten C before, yet doth no way aid or assist to the killing of him; and therefore I think, with submission, the law, and all our law-books, and reason itself, are clear for the acquitting of A in this case.

Mr. Hawles. My lords, I think the resolutions that have been given in the cases before, will warrant us in our opinions in this, that A is not guilty of murder in this case: for I think it was said by the judges, that notwithstanding a man knew another had a design upon a third person, yet it was lawful to keep company with him, if he did not join with him in the design. Now here it doth appear, that A keepeth B company, but not upon that design, for he had no malice to C, nor had any hand in his death, and C cometh in by accident into their company or place where they are: with submission, my lords, A is totally not guilty, for there was no malice in him; and though he was there, he was there upon his lawful occasions; and if they two fight, the best course he can take is to stand still and do nothing; and therefore he cannot be guilty of murder or manslaughter.

Mr. Price. My lords, I have but this word to

say, his being there was lawful; C cometh there but by accident, and when they two do fight, his not parting of them doth not make him guilty of the other's death, here is no malice, therefore he is not guilty of murder, and he hath done nothing towards the fact, therefore he is not guilty of man-slaughter.

L. H. Stew. Will you say any thing to this question, you that are of the king's counsel?

Att. Gen. My lords, we are ready to speak to the present case, when we receive intimation from your lordships, that what is put is the present case.

Serj. Thompson. My lords, if they put a case of fact to be argued as a case of law, and from time to time alledge facts which are not in the case before us, we cannot speak to them.

Att. Gen. My lords, we are ready to argue the case of the prisoner at the bar when it is stated; but till then, we humbly beg your pardon: we think we are not bound to speak to other cases.

L. H. Stew. My Lord Chief Justice, what say you to it?

L. C. J. Holt. If your lordships please, I will put the question:

'Whether if A heard B threaten to kill C, and some days after A shall be with B upon some other design, where C shall pass by, or come in the place where A and B are, and C shall be killed by B; A standing by without contributing to the fact, his sword not then being drawn, or any malice ever appearing on A's part against C; whether A will be guilty of the murder of C?'

My lords, I am of opinion that A in this case will not be guilty of murder or manslaughter: for it doth not appear by the stating of the case, that A did consent to the design, or in any wise contribute to the fact.

L. H. Stew. My Lord Chief Justice Treby.

L. C. J. Treby. My lords, I take this question to be the same in substance as to the point in law with the last; and am of opinion that A is not guilty of murder or manslaughter.

Just. Nevil. I am of the same opinion.

L. H. Stew. If all the rest of you are of the same opinion, you may spare yourselves the trouble of delivering it particularly.

Judges. We are all of the same opinion.

[Then there was a little pause; and afterwards the earl of Kingston stood up.]

E. of King. My lords, I desire for my own private satisfaction to know,

'Whether a person knowing of the design of another to lie in wait to assault a third man, who happeneth to be killed, (when the person who knew of that design is present) be guilty in law of the same crime with the party who had the design, and killed him, though he had no actual hand in his death?'

L. H. Steward. My lord, I must crave your

excuse, there is another question to precede this.

E. of Devon. My lords, I had a question to ask; but it being much to the same purpose with the two last, I think it better to wave it, for there hath been given an answer to it already.

L. H. Steward. Then, my lord of Kingston, will you be pleased to deliver up your paper to the table? (Which was done.)

L. H. Steward. My lord Mohan, do you desire your counsel may have a copy of this question?

E. of Mulgrave. My lords—

L. H. Steward. My lord of Mulgrave.

E. of Mulgrave. I desire your grace will hear the question. Pray let it be read, that we may know what it is.

L. H. Steward. Read it.

Cl. of Crown. Readeth.

'Whether a person knowing of the design of another to lie in wait to assault a third man who happeneth to be killed, (when the person who knew of the design is present) be guilty in law of the same crime with the party who had the design, and killed him, though he had no actual hand in his death?'

E. of Mulgrave. My lords—

L. H. Steward. My lord of Mulgrave.

E. of Mulgrave. I think, my lords, in a case of this nature we cannot be too exact: I humbly conceive that is not a proper question to be put, therefore I move that we may adjourn to consider of it, whether it shall be put or not, if that lord do insist upon it.

L. H. Steward. My lord of Kingston, doth your lordship insist on this question being put?

E. of King. Yes, my lords, I do, and I must insist upon it; for I think I cannot give my private opinion in this case without satisfaction in it.

Lords. Then adjourn, adjourn.

L. H. Steward. This court is adjourned into the House of Lords.

Then the Lords went back to their own house in the same order, and debated this matter amongst themselves for about an hour.

Between six and seven in the evening the Lords returned into the court in the same order, and being seated on their benches, and his grace in the chair before the throne, they proceeded thus:

First, Proclamation was made for silence.

L. H. Steward. My Lord Chief Justice and you the judges—

L. Cornwallis. My lords—

L. H. Steward. My lord Cornwallis.

L. Cornwallis. My lord, before your grace giveth any directions, I think you should call the prisoner.

L. H. Steward. Is not the prisoner at the bar?

L. Cornwallis. No, my lord.

L. H. Stew. Call for the prisoner.

[Then Proclamation was made for the go-

vernor of the Tower to bring forth the prisoner, and he was brought as before.]

L. H. Stew. I am to let you that are of counsel for the king and the prisoner know, That if any question be put by any of my lords which any of you shall not think fit to give an answer to, my lords will take it for granted, either on the one part or on the other, that the reason is, because it is not necessary to give any answer; and then they will proceed to have the answer of you, my lords the judges. And now for myself, I must desire your lordships will give me leave to come down again to the wool-pack.—*Lords.* Aye, aye.

[Then his grace came down, and seated himself on the wool-pack.]

L. H. Stew. My lord of Kingston, Will you please to propose your question?

Earl of Kingston. My lord, my question is this, which I desire the judges opinion in for my own satisfaction:

‘Whether a person knowing of the design
‘of another to lie in wait to assault a
‘third man, who happeneth to be killed,
‘(when the person who knew of the design
‘is present) be guilty in law of the same
‘crime with the party who had the design,
‘and killed him, though he had no ac-
‘tual hand in his death?’

L. H. Stew. My lord Mohun, do you desire your counsel may have a copy of that question?

L. Mohun. Yes, if your lordships please.

L. H. Stew. Read it aloud, and deliver a copy to my lord.

[The question was read by the clerk of the crown, and one copy of it delivered to the prisoner's counsel, and another to the king's counsel, and a third to the judges.]

L. Mohun. Is it your lordships pleasure, that my counsel be heard to this case?

Lords. Ay, ay.

Sir T. Powis. The case that is put, my lords, is this:

‘Whether a person knowing of the design
‘of another to lie in wait to assault a third
‘man, who happeneth to be killed (when
‘the person who knew of the design is
‘present) be guilty in law of the same
‘crime with the party who had the design,
‘and killed him, though he had no ac-
‘tual hand in his death?’

My lords, I shall not insist upon the same privilege that the king's counsel did even now do, to decline speaking to any case that your lordships shall put. But I hope your lordships will permit me to say, that I do not admit this to be the case of my lord Mohun, and I hope that my speaking to it shall not be taken as any admission that this is his case. But as this case is put with that allowance, that I speak to it not as his case, I do take it, that

this person thus present at the killing of the third man, is not guilty of murder.

My lords, there are but two circumstances in the case that can draw him into any danger.

The first is, That he knew another person had a design to make an assault upon a third man. And

The second is, That he who had the knowledge of this design, was also present when upon that assault that third person happened to be killed.

But, my lords, I do take it, that in this case neither of these ingredients will make this man guilty of murder.

As to the first, The knowing that a man has a design to make an assault upon a third person, that taken by itself is no crime. It frequently happeneth, that a man heareth what others threaten, that they will assault and beat such an one; I may know that another doth so design, and that he will watch his opportunity for the doing of it; and yet my mere knowledge, my mere knowing of it, doth not make me guilty of any crime, though I do not endeavour to prevent it.

I confess, it doth become a good man upon such knowledge to do all that he can to prevent such beginning of mischief; but if he doth not prevent it, that is no crime.

The second matter is, That though he did know of this design, he was also so unfortunate as not to prevent it; nay more, he was present when the assault was made, and that assault is attended with the death of the party assaulted; but he never acted in it, never abetted it. Take all this together, and yet he is not guilty of murder, nay, perhaps not of any crime, at most only of a misdemeanor.

For it is no more than this: I knew another person did intend to assault a third man; I was present when he did assault him, but did not prevent it either before he made it, though I knew he designed it, nor whilst he was making the assault upon which the man is killed. That is all that this thing doth amount to; and no man can say, with humble submission, that this can involve me in the crime of murder.

It is true, if I command *A* to beat *C*, and he according to my command doth fall upon him, and so beat him that he dieth; this maketh me guilty of his death, because what is done by that command of mine is my doing; therefore though I only commanded him to beat him, yet he dying upon that beating, which was made pursuant to my command, I that gave the command must answer for it, and am guilty of all that followeth thereupon.

But if I only know that another person designeth to do such a thing, and am neither commanding, aiding nor assisting in the doing of it, but only present at the time, but did not interpose to prevent it; that doth not make me such an agent in this matter, as that I should be any ways guilty of his death, if it doth ensue. I take it, this case cometh to no more than this; there is no malice prece-

dent, no sort of abetting, aiding or assisting, but a bare declining to prevent the assault, and that will not amount to any thing that is capital: if it be any offence, it can only be construed as a misdemeanor, but neither murder nor manslaughter.

Mr. *Hawles*. If your lordships please to spare me one word on the same side: it is no manner of crime for a man to know, that another doth design to lie in wait to murder a third person, much less to assault him.

There is but one case that I know of in law, where the knowledge of an ill design, without discovery and endeavour to prevent it, is an offence, and that is in the case of high-treason; and yet even there the bare knowledge doth not make a man guilty of treason: and it was a hard case if it should; for it is not in the power of any innocent man to say, that he shall not know of an ill design, either of murder or high-treason.

It is true, in the case of treason, if I conceal it, it is a crime; but it is not treason, but only misprision of treason; which is forfeiture of lands, and perpetual confinement in prison during my life: but it doth not extend to any other matter; for though I know, and do conceal it, that is no manner of crime at all, though that is farther than this case putteth it, for it only goeth to the knowing, and not to the concealing.

And, my lords, with submission, this would be likewise a hard case, if the law was otherwise: for sometimes a man may apprehend he knoweth of a design, when there is no such thing designed. Your lordships know, where a certain gentleman said he would kill any man that did oppose him, when he neither designed it, nor executed any such purpose: and in such a case, though it had been well done of the person that heard of the design, to have gone and informed the third person, (and if he had, I believe your lordships would have had no occasion of a trial at this time, for it might have been determined another way); yet his not doing it is not a crime.

Then further, my lords, a person's being present at such a time is his misfortune, but not at all his fault; he can no more help the action, than he could the ill design, or his own knowledge of that design. It is a complicated misfortune, both to know it, and be present at the execution of it; but without having any hand in it, it can be no offence: for indeed, it is as to him no more than a man's being present that did not know of such a design. And if this was a special verdict, upon an indictment for murder, I doubt not but my lords the judges would give their judgment, that the defendant was Not Guilty.

Mr. *Price*. I have only this word to add, my lords: I do take it, that the bare privy of this design, with the bare personal presence of him that was so privy when this act is committed by another man, will not amount to make him principal; and so he will not be guilty of murder: for we find, that to make a

man principal in murder, there must be aiding and abetting, and only being present will not do it. Now the aiding and abetting must be, either by commanding or assisting, or putting the person assaulted in terror or fear; or he must be there ready, and designing to assist in case of opposition. These are facts that the law requireth to the making a man principal in murder: and bare privy, with a mind to assault, and bare presence when upon the assault the man is killed, will not amount to make a man principal, and consequently guilty of murder.

L. H. *Stew*. Mr. Attorney, Do you think fit to say any thing to what the counsel for the prisoner have alledged?

Att. Gen. No, my lord.

L. H. *Stew*. Nor any other of the king's counsel?—Sol. Gen. No, my lord.

L. H. *Stew*. Are ye all of that mind?

Serj. *Tremain*. I am of that mind, my lord.

Serj. *Thompson*. And so am I.

L. H. *Stew*. Then, my Lord Chief-Justice, what say you to it?

L. C. J. *Holt*. If your lordships please, I will repeat the question:

‘Whether a person knowing of the design
‘of another to lie in wait to assault a
‘third man, who happeneth to be killed
‘(when the person who knew of the de-
‘sign is present) be guilty in law of the
‘same crime with the party who had the
‘design, and killed him, though he had
‘no actual hand in his death?’

My lords, I am of opinion, this is no murder nor manslaughter; he that knew of the design of assaulting, only happened to be present when the assault was made, and the party killed; but if he did not contribute to his death, he is not guilty of murder. This question is much to the same effect with the question that was put before: but if the person that knew of this design did advise it, or agree to it, or lay in wait for it, or resolved to meet the third person that was killed, with him that killed him, it would be murder: but as this case is put, it is neither murder nor manslaughter.

L. C. J. *Treby*. My lords, I am humbly of the same opinion, as this case is put. The person to whom this matter of the design to lie in wait to assault another is communicated, is only passive; he only receiveth the notice of it, and doth nothing towards the fact. But if by going to the place, directing, persuading, promising assistance, or encouraging, he had discovered his consent, or had lain in wait himself, then he had been guilty: but if he did nothing, but only receive this notice, and then the person assaulted happened to come by, and is killed in his presence, this is but an accident, and doth not involve him in the murder. And I think, in effect, it is the same with the second question that was proposed. There it was put, of one that had an animosity against another; here it is put, of one that lay in wait

to assault him: there it was put, of accompanying him to the place where the party was killed; here it is, of his being killed in his presence: so that the resolution must be the same in this case that was given in that.

Just. Nevill. My lords, I shall not spend any of your lordships time: I am of the same opinion with my lords that spoke before, and for the reasons that they have given.

L. H. Stew. If they are all of the same opinion, I suppose your lordships will not require their particular delivering it.

Lords. No, no.

Judges. We are all of the same opinion.

L. H. Stew. I am now to know of your lordships, whether there be any of you that have any more questions to ask?

E. of Nottingham. My lord.

L. H. Stew. My lord of Nottingham.

E. of Nottingham. The question that I have to propose to your lordship is the same that hath been already offered to you, but with some little variation; for I do find, my lords the Judges do interpret this person's being killed in the presence of another, to be upon an accidental meeting. I would propose to your lordships, that the judges may answer what the law would be, when a person, knowing of the design of another to lie in wait to assault a third man, accompanied him at that time that the design is to be executed, whether it be the same crime in the one as the other?

L. H. Stew. If your lordship have your question in writing, pray deliver it in.

E. of Nottingham. I will immediately, my lord. [Then he did put it in writing.]

L. H. Stew. Will your lordship please that it may be handed to the table? [Which was done.]—*L. H. Stew.* Read it.

Cl. of Cr. Readeth.

‘ Whether a person knowing of the design
‘ of another to lie in wait to assault a third
‘ man, and accompanying him in that de-
‘ sign, if it shall happen that the third
‘ person be killed at that time in the pre-
‘ sence of him who knew of that design,
‘ and accompanied the other in it, be guilty
‘ in law of the same crime with the party
‘ who had the design, and killed him,
‘ though he had no actual hand in his
‘ death?’

L. H. Stew. My lord Mohun, do you desire a copy of this?

L. Mohun. Yes, if your lordships please.

L. H. Stew. Carry my lord one.

[Then copies were delivered as before.]

L. H. Stew. Well, Sir, what say you to that question?

Sir Tho. Powys. The case that is now propounded is this:

‘ Whether a person knowing of the design
‘ of another to lie in wait to assault a third
‘ man, and accompanying him in that de-
‘ sign, if it shall happen that the third
‘ person be killed at that time in the pre-
‘ sence of him who knew of that design,

‘ and accompanied the other in it, be guilty
‘ in law of the same crime with the party
‘ who had the design, and killed him,
‘ though he had no actual hand in his
‘ death?’

My lords, I shall not, though I am of counsel for this noble lord, decline or refuse speaking to this question; still, my lords, with that saving which I know your lordships will allow me, that I am very far from admitting that this, which goeth much farther than the last case, is the case of my lord Mohun. Whether your lordships will permit the king's counsel, who have declined speaking to any of the cases hitherto, as not being, as they pretend, my lord's case, now to speak to this which we do much less admit to be so, than they did the others, will be in your lordships pleasure to determine, but I shall not decline to speak to it, with that saving.

And truly, my lords, with humble submission, I do take it, that as this case is put, the party who accompanied the other in such manner as in this case it is stated, is not guilty of murder. I know it was intended by that noble lord who proposed the question, that it should be admitted, that beyond all doubt the fact was so as here it is stated; and then the question is, what the law will be where the fact is thus admitted and agreed to on all sides: and if there was such a case, (for, my lords, I speak to this as a case at large) if there was such a case where the fact is beyond all question made out to be so as it is here stated: yet I take it that in a case of life, which is the case now before your lordships, the party will not be guilty of murder.

My lords, here is a further circumstance added in this case than what hath as yet been inserted into any of the other cases; that is, That the party knoweth of the design of him that he accompanieth to assault a third man, and doth accompany him in his design, and then is present when the design is executed; yet all these together, will not, as I humbly conceive, with submission to your lordships judgment, make this to be murder, because it doth not appear in this case that he did accompany him with an intention to execute this matter, or to aid and assist him in the doing of it: there is no such circumstance in the case, and 'tis that which must be the thing that will draw him in to be guilty of murder.

For if two men (to put a case, which I hope I may do, with your lordships pardon, to explain myself) should be travelling upon the way, and one of the persons should acquaint the other, that at such an inn, there is a servant that he is resolved to beat, and this person that has this matter imparted to him, doth accompany the other in the journey (which I take it answereth the knowing the design, and accompanying him in the design), and when they come to the inn, the thing is executed in the presence of the party that knew of such a design, and it doth fall out that death doth ensue upon it, unless he that did accompany him did

some way or other act, contribute, or assist in the doing of it, it doth still remain a thing whereof he had only privity and knowledge, which he had done well, (especially in regard of the consequence of it) to have prevented; and he is highly blameable, that he would accompany a man who had such a design to do an unlawful act, and did not prevent him from executing of it.

All this is blameable in him, but it will not, as I conceive, be murder in him; for I must insist upon that in point of law, that to make any thing murder, there must be prepensed malice in the person that is to be found guilty of it, or some precedent agreement to do it, or some act of aiding or assisting of the person who doth it; but as this case is, here is nothing of malice doth appear, or that the person who accompanied the other in his design had any sort of malice against the person assaulted. And it doth not appear that he did any way assist in the doing of it. He was present at the time when the other executed the design he had imparted to him, but he never joined in it, nor had any malice precedent, nor did assist or do any act at that time; and therefore I take it in this case, which (as I said) I am very far from admitting to be my lord Mohun's case, that the party who accompanied the other is not guilty.

Mr. *Hawles*. My lords, though we who are of counsel for this noble lord, the prisoner, do not think this case, that is put, to be his case, for, with submission, if the indictment be looked upon, your lordship will find—

L. H. *Stew*. Sir, I must stop you there, you are not to tell my lords what your opinion is as to the fact, for of that my lords are the judges; you are to take the case fairly, as a case put, and you are to inform my lords what the law, in your opinion, would be upon such a case. It is not before you, but my lords only, to consider whether this be applicable to my lord Mohun's case or not.

Mr. *Hawles*. If your lordship please, I shall observe your directions in that matter, and with humble submission, this is not murder in him who accompanieth the other, as this case is put; for in every case of murder the indictment must be either, that he actually killed him, or aided and assisted him that did kill him. But, with submission, there is neither of these in this case.

He did know of the design, there is no crime; he did accompany him in it, that is, he bore him company at that time; he went with him to the place where he executed his design, but he did nothing when he came there to further, promote, or encourage the execution of it; and therefore it can never make him principal, nor accessory to the murder.

Mr. *Price*. I shall only say this, my lords, that I take it, that the bare going with him in this design, without doing any act, doth not involve him in the confederacy, as aiding and abetting. Something must be done or said; either he must assist or advise, or otherwise he

cannot be principal, and consequently cannot be guilty of this murder.

L. H. *Stew*. Mr. Attorney, have you any thing to say to this?

Att. *Gen*. My lords, we that are of the king's counsel do not desire to be heard to this case neither.

L. H. *Stew*. I do not hear you, Sir, what you say.

Att. *Gen*. My lord, we do not desire to speak to it.

L. H. *Stew*. Then, my lord chief justice.

L. C. J. *Holt*. This is the question:

‘Whether a person knowing of the design of another to lie in wait to assault a third man, and accompanying him in that design, if it shall happen, that the third person be killed at that time in the presence of him who knew that design, and accompanied the other in it, be guilty in law of the same crime with the party who had that design, and killed him, though he had no actual hand in his death?’

My lords, as for this last, I desire to make some observations upon the words, ‘Had no actual hand.’ By these words, I suppose, is meant, he did not draw his sword, or lay any hand upon the person slain, or give any actual assistance to the other person at that time when the third person is slain, but was only in company, and a looker-on.

E. of *Nottingham*. My meaning in those words is, that with his hand he gave no stroke.

L. C. J. *Holt*. That my lords, I take to be the meaning, he did not give an actual stroke, nor held the person whilst the other killed him, nor used any violence.

Now, I am of opinion, my lords, that this is murder in the person that did accompany the other in the design. For he being acquainted with the design, and knowing of the intention of the party to commit murder, or do an unlawful act, upon which death might ensue, accompanying him in that design, he shews an approbation of it, and gives him greater courage to put it in execution; which is aiding, abetting, assisting, and comforting, which are words used in such indictments, and so my humble opinion is, it is murder in that person that accompanied the other, as well as in him that did the fact.

L. C. J. *Treby*. My lords, as this case is, I think the accompanying of him in that design (which are the effectual words upon which the question turneth) is murder.

Here is, first of all, the party that designeth the assault, and he doth, pursuant to that design, make this assault, and thereupon doth kill the third man; this undoubtedly is murder in him, for here was malice prepensed, an intent of bodily hurt to the party, and in pursuance of this intent, death ensueth; this is unquestionably murder in him.

Then the question is, what crime it is in him to whom this is made known, and who accom-

panied the other in that design, knowing of it? I take this to be a consent to the design, and to the execution of it. It is more than knowing and not revealing of it, though that was his duty to have done (and so the counsel for the noble lord did admit, that it was a misdemeanor in him not to hinder such a breach of the peace.)

But here, I say, is more than that: he goeth with him to the place, and accompanieth him in order to the executing the design, and this is an aiding and abetting of it. If a man say to another, I intend to assault and beat such a one; come along with me, stand by me, and see it done; and the other consenteth, and accordingly goeth along with him, and accompanieth him while he beats and kills the man; this is an approving, encouraging, and emboldening of him in his mischievous purpose, and shews such concurring malice in that other person, as renders him guilty of the same crime with him that with his hand and weapon beat and killed the man.

Justice *Nevil*. My lords, as this case is, and as I take the law to be, this is murder. It is a case of one's lying in wait, and another person doth accompany him in the design, he that did design the lying in wait having told it to him, and then he is present at the execution. I take it as a law, if the party is killed, he that is present, and cometh with the other upon that design, shall be taken to come to assist or abet the other, or defend him if any thing of opposition should happen, and that I take to be murder.

L. H. Stew. Are you all of the same opinion?

Judges. We are all of that opinion, it is murder in both in that case.

E. of Devon. My lords—

L. H. Stew. My lord of Devon.

E. of Devon. My lords, I desire they may all give their reasons, as well as their opinions, as this case is.

Mr. Justice Gregory. My lords, I am humbly of the same opinion with my lords chief justices that spoke before me, that this is murder, and my reason is this: First, he knew of the design, which was an unlawful design; then he accompanied him, as this case is put, not only to the place, but in the design, which differs the case from his being present by accident; for by his going along with him he doth encourage him to do that, which perhaps singly the other would not venture upon; and going and being present when the design is executed, upon which the man is slain, I take it he is as much guilty as the person that struck the stroke in point of law.

Just. Eyres. My lords, I am humbly of the same opinion; I take it to be murder in him that knew the design, and did accompany the other in it, though he did nothing at all towards the killing of the man.

For, my lords, it is the intention of the party that diversifieth the act. If he came there with an ill intention, and to assist him if need did

require, as it is plain he did if he did accompany him in the design, which is a strong evidence of the intention: and, my lords, nature hath allowed no man a casement into another's heart, and therefore we can judge of no man's intention, but by circumstances of the fact appearing without; and then, I say, if the fact be so apparently from the circumstances of it, that he knew of the design, and accompanied him in it, it is a strong evidence that he came to assist him; and though he doth nothing actually in the matter, yet being present to assist him if occasion did require, it is plain he did aid and abet him in the action, and so it is as much murder in him, as in the other that gave the stroke.

Baron Turton. My lords, I am humbly of the same opinion; the thing that differeth this from the former case is, that this person was in the design with the other; for that, my lords, I take to be accompanying him in the design in order to the execution of it, for bare privity and knowledge of the design would not do it; but if he be with him at the time, and accompany in order to the execution, that maketh him as much criminal, as he that did actually occasion the death of the person, for he was present in the company, and ready to assist him in the evil design, which I conceive is as much murder as the other.

Baron Powell. My lords, I am of opinion, as this case is now put, that this is murder in both, and my reason is this: where one person is privy to a design of felony, or committing some personal violence, as this case is, and is not only privy to it, but goeth along with him, and accompanieth him in putting this design in execution, though he may not think it will extend so far as death, but doth only intend beating, and hath no personal hand, or doth otherwise contribute; but by his being with the other person when he executeth his design of assaulting, and the party beaten dieth, they are both guilty of murder.

L. Mohun. My lords, will your lordships give leave, that my counsel may answer some things that the judges have said?

L. H. Stew. No, my lord, you must not reply after the judges have given their opinions. Have any of your lordships any more questions to propose?

L. Cornwallis. My lords, I have one.

L. H. Stew. My lord Cornwallis.

L. Cornwallis. My lords, I am very sorry to have occasion to ask any questions in this case; but I humbly desire a question may be answered by the judges, which is this:

'If a person be by, named William, when
'Thomas said he would stab John, upon
'which William said, He would stand by
'his friend, and afterwards Thomas doth
'actually murder John, and William is
'present at the same murder: whether the
'law will make William equally guilty
'with Thomas, or what crime William is
'guilty of?'

L. H. Stew. Pray deliver in your paper, my lord.

It was delivered in, and read by the Clerk of the Crown, and copies given of it as before.

L. H. Stew. What say you to this question, gentlemen?

Sir T. Powis. May it please your lordships, this question runneth thus:

‘ If a person be by, named William, when
‘ Thomas said he would stab John; upon
‘ which William said, he would stand by
‘ his friend; and afterwards Thomas doth
‘ actually murder John, and William is
‘ present at the same murder: whether
‘ the law will make William equally guilty
‘ with Thomas; or what crime William is
‘ guilty of?’

My lords, I do not question but many cases may be put which will be plainly murder, and if this case should be attended with facts equal to the state of this case, I believe it will amount to murder. But upon this difference the resolution of it will depend, and every case must stand upon its own circumstances.

If a person do generally say, I am fully resolved I will stab such a man, and say so without condition or limitation, that he will do it; and another doth declare his intention to assist and aid him, by saying, I will stand by you in it, and afterwards the thing is executed in his presence who so concurred; I do take it, that that is an evidence that he is equally guilty with the other.

But, on the other hand, if a man say, I will stab such a one if he oppose me in such a design, and so maketh his resolution conditional, and the person that is present doth say, I will stand by you in it, that is in your doing it, if you are opposed in such a particular matter; my lords, with submission, if he is not opposed in that particular thing or design upon which he did say he would stab him, but if he doth afterwards, upon some other occasion different from the former, and not relating to what he was talking of before, or upon some other provocation, stab him, and the other person happeneth only to be present, I take it, that the words which he spoke with a limitation to a particular matter, will not make him liable to the guilt of the murder that is committed upon quite another account.

The words, ‘ Standing by him,’ are capable of two senses; but I would not, in so serious a matter as this, offer to put a jocular sense upon them, as if it was meant he would stand by and not meddle; but I take it, that such a case as this will turn upon the manner of the man’s engaging himself: if he engaged to stand by him in a particular matter, and the other doth stab the threatened person afterwards, not upon that particular occasion, but upon another account, and he happeneth only to be by, these words will not draw him in, though they should be well proved to be spoken, so as to involve him in the guilt of that murder.

VOL. XII.

For the law is favourable to a man in he case of life, and will judge according to the intention of the party; and he having not abetted or contributed to the fact, his words shall not be carried to his prejudice, farther than his intention, or farther than the concomitant circumstances of the matter will make them plainly import.

This case is put generally, and without restraint; and there is no question but many cases may be put that will undoubtedly be murder; but every case must, as I said, stand and fall by its own circumstances.

Mr. Hawles. My lords, I think the case, as it is put single, and upon these circumstances, would be murder; and my reason is this, the person that saith he will stand by a man, who saith he will kill or stab another, is as much guilty as that man himself, and will be thought as malicious; but if it should happen that between the words pronounced, and the murder committed, that the person that saith he will stand by his friend, cometh to have a friendship and kindness for the party that is threatened to be killed, and upon meeting him caresses him extremely, and there being no malice continuing (as there must be to the time of the stroke given, to make murder), but he happened to be killed by that other, suddenly in his presence, those words will not make him guilty of murder; but as the case is put, I think it is murder.

Mr. Price. My lords, I shall not take upon me to trouble your lordships with making a case, but as this is put without any condition, or other circumstance annexed to it, I think it will be murder.

L. H. Stew. There will be no need to ask the king’s counsel upon this question whether they will speak to it, because the counsel for the prisoner agree it to be murder; therefore if your lordships please, we may now proceed to ask the judges opinions: and first, What say you, my Lord Chief Justice?

L. C. J. Holt. My lords, the question is this:

‘ If a person be by, named William, when
‘ Thomas said he would stab John, upon
‘ which William said he would stand by
‘ his friend, and afterwards Thomas doth
‘ actually murder John, and William is
‘ present at the same murder; whether the
‘ law will make William guilty with Tho-
‘ mas; or what crime William is guilty of?’

My lords, I am of opinion that this is a great evidence of murder in William, that was thus actually by. I cannot say it is murder, as the case is put; but upon such an evidence, fact is to be left to the conscience of a jury in the case of a commoner, or the conscience of the peers in the case of a peer.

For when William said he would stand by his friend, who said he would stab John, that is plainly a consent, or at least such an expression, from which a consent to the stabbing of him may be inferred.

Then afterwards it seemeth Thomas actually

murdered John, and William was present. Now if William was designedly present with the other that committed the murder, then it is plain it will be murder in William; but if there be no evidence to prove upon what account he was present, it may be presumed he was present in pursuance of his former agreement, so that it may be murder, or not murder, as circumstances may happen upon the evidence; if he was present in the pursuance of his promise, then no doubt it is murder; but if he did not meet in pursuance of that agreement, it may not be murder. But this is all matter of evidence, and that rests upon the consciences of those that are to try the prisoner.

L. C. J. Treby. My lords, I am of opinion that this is evidence, and great evidence of murder; the fact consisteth of two parts.

First, here was a deliberate expression of his intention, that he would stand by his friend Thomas, when his friend Thomas had said before he would stab John, and this I take properly to be interpreted, and understood as a promise of abetting him in the murder he would commit; for, I presume, standing by him in this case to be meant in a grave sense, signifying that he would befriend, and, if there should be occasion, defend and support Thomas in what he resolved to do.

Secondly, He was present at the stabbing, which was before designed and spoken of. Now I think his being present when that resolution of his friend was executed, coupled with his preceding declaration of his intention, is a strong evidence of murder.

Just. Nevil. My lords, the question I take to be, whether the law of England saith William is guilty of this murder? truly, my lords, I must say as my lords have said before, that as this case is, this is a very strong evidence of murder: for when he doth say, that he will murder such a man, and the other saith, he will stand by him, in the common acceptation of those words, it is taken, that he doth then agree with him in that design, which he declareth to be to stab John.

But then it seemeth to me truly, that this case is not put full, how long it was afterwards that the fact was done, and what circumstances attended it; for if any circumstance happened afterwards that did amount to a countermand of his promise, or any thing interposed to interrupt it, that this agreement was not performed, perhaps the case might not be murder, but still it is evidence so far as your lordships may judge upon the circumstances that attend it whether it be murder or no. But to declare a further opinion, as this case is put, truly I cannot.

Just. Gregory. My lords, I do upon this case humbly conceive, there is a little difference from the former, only there it is put positively, but here as evidence. Now, my lords, I do humbly conceive that in common discourse, I will stand by my friend, is, I will assist my friend. If my friend should say, I will kill such a man, or I will do any other act,

and I say I will stand by him, I think the import of the words is, I will assist him in it.

My lords, as to the latter part, as this case is put, for I can go no further, it doth not appear, whether when the man was killed, he came by accident, or in pursuance of his agreement, knowing of the design. Now that is but matter of evidence; if he came by accident it will not be murder, but if he came with design, no doubt it is murder in one as well as in the other.

E. of Mulgrave. My lords—

L. H. Stew. My lord of Mulgrave.

E. of Mulgrave. If any of my lords desire that the rest of the judges should give their opinion, it is fit they should be heard; but if no lord doth desire it, and they are of the same opinion; without any more to do, because it may save a great deal of time, I desire your grace may only ask them, whether they agree in their opinions with those that went before?

L. Cornwallis. My lords, I humbly desire the judges may all speak.

Lords. Go on then.

Just. Eyres. My lords, I humbly conceive this is a question of fact, and not of law, and it is a very strong evidence, if a man hear another say he will stab such a man, and he saith he will stand by his friend, and accompanieth him at the time when the fact is done, it is a strong evidence, that he came with a murderous intent with his friend; and doth as much manifest his intention to commit murder, as if he had actually given the wound; and a great evidence to involve him in the crime, as much as the person that gave the stroke.

Baron Turton. My lords, I am of the same opinion with my Lords and my brothers that have spoken before me; my Lords, I confess I do not think it cometh up so close to the matter as the question that was put last before; for this, as my brother Eyres saith, is rather a question of fact and evidence, than law. But certainly a very strong evidence it is of the intention of that party that was present when the other said he would stab the third person, and his going away presently, and accompanying him when the stab was given, and murder done, I say his presence after this determination is a very great evidence, that it was done in pursuance of that agreement: It is a matter of fact which your lordships will determine, according as the circumstances appear before you, which may vary the resolution one way or other.

Baron Powell. My lords, I am of opinion as this case is put, that it may be murder or not murder, according to the concomitant circumstances. If a man say, I will stab such a one, and another say he will stand by him, and afterwards when he is with his friend, the man is stabbed, if that is at some distance of time from the words speaking, and the meeting be accidental, or other facts happen that may alter the case, it may receive another determination. But if after this is said, there be any immediate going to look after this man, or they be near

the way where this man is to come, and then he is killed; this is a mighty strong evidence that something was done in pursuance of this resolution, and that the one went along with the other to countenance him in the action.

L. H. Stew. Have any of my lords any other questions to propose?—*Lords.* No.

Earl of Mulgrave. My lords, if there had been any other questions proposed by any other lords, I would have staid till they had all been over; but I see their lordships are at an end with their questions: I have one which I think is nearer the case than any has been yet, and of more importance to the matter in hand, and more fit for the counsel to inform you in, and for your lordships to ask, and the judges to answer. The question is this:

‘ If A accompanieth B in an unlawful action,
‘ in which C is not concerned, and C hap-
‘ peneth to come in the way of B, after
‘ the first action is fully over, and happen-
‘ ed to be killed by B, without the assist-
‘ ance of A; whether A is guilty of that
‘ man’s murder?’

This question was handed to the table, read by the clerk, and copies given as before.

L. H. Stew. What say you to it, gentlemen, who are of counsel for the prisoner?

Sir T. Powis. May it please your lordships, I will not trouble your lordships with the repeating of the case again, because my copy is agreeable with what was read at the table: nor shall I trouble your lordships with many words upon this case, because I take it, the law is very plain.

If two persons accompany each other to do an unlawful act, and in the execution of that unlawful act, one of them doth go beyond what was first designed, and a third man is killed whilst they are in execution of that act, though the one did the fact, and the other did not immediately contribute thereto, yet he being joined with him in the unlawful action, upon which this doth ensue, he is answerable for all the ill consequences of it; the law herein is clear according to the case that was put at first of two persons going together to rob a park and steal deer.

But if that unlawful action be executed, or the two persons who joined in the design have totally desisted from it, or are disappointed in it, if afterwards when they are together upon some other occasion, it happeneth that one of them killeth another man, but his friend no way aided him or assisted him in the doing of it, your lordships and the law will separate these persons who were at first joined together for another purpose; and will distinguish between them in this new matter that is subsequent to the former agreement, though they were in company together.

Because in the first case, he that is joined in an ill action must look to himself, and be answerable for all that followeth thereon: In the second case, he is in no fault at all, it is only his misfortune to be in ill company if he had no

hand in the fact. This the law is very plain in, and therefore I shall not trouble your lordships further with speaking to it.

Mr. Hawles. My lords, I would only add one short word: There is but this one difference between an accessory and a principal; the principal is always present, the accessory is always absent; and I would only put you one case of an accessory of felony out of my lord Coke; he saith, It must be the same numerical thing in which they are joined, and therefore, if A bid B rob the vintner’s boy of plate as he cometh to a gentleman’s chamber to bring wine, but B doth not pursue the instructions, but breaketh into the vintner’s house, and stealeth the plate there; this is a different matter, it is not the same thing wherein A and B agreed at first, and A is no way concerned in it.

The same law is, if A and B agree to kill C, and B killeth D; though A be present, it will not be murder in A; for the agreement was for the killing of C, and not of D.

My lords, as this case is put, they did agree in the unlawful act, but that matter was over, and there is no agreement as to the other matter, nor is that pursuant to the matter agreed upon; and therefore the presence of the party that agreed to the unlawful act doth not make him guilty of murder, unless he agree to that too.

Mr. Price. My lords, I have but one word on the same side. I take it, that when a man is doing an unlawful act, there is an inseparable incident that doth attend it, which is malice implied. And this is so inseparable, that when his ill design is at an end, his malice is at an end too, and hath no being, and therefore if he entereth upon an ill design afterwards, though another be present that was joined with him in the former ill design, yet his malice who was so joined, being coupled with the ill design that is over, must be gone too; and there is no malice in his being barely present. And therefore for that reason, he that was aiding and assisting before, cannot be principal in such a sudden act as this new one is, and consequently cannot be guilty of murder, or of manslaughter.

L. H. Stew. Mr. Attorney, do you or any of the king’s counsel think fit to say any thing to this question?

Att. Gen. My lords, we that are of the king’s counsel do not think we have any occasion to be heard to this question.

L. H. Stew. Then, my lords the Judges, what say you to it?

L. C. J. Holt. If your lordships please, I will again repeat the question; it is this:

‘ If A accompanieth B in an unlawful ac-
‘ tion, in which C is not concerned, and C
‘ happeneth to come in the way of B, after
‘ the first action (that is, the unlawful ac-
‘ tion, I suppose) is fully over, and hap-
‘ peneth to be killed by B, without the as-
‘ sistance of A; whether A is guilty of that
‘ man’s murder?’

And I do humbly conceive with great clearness, That A is not guilty at all. For here is no relation to the first unlawful act that he was engaged in, but that is all over and determined; and then C cometh in the presence of B, who killeth him, and of A who had no knowledge of any malice between them, or any design of his death. This is merely accidental, and doth not depend upon the first unlawful action; and therefore A is not guilty.

L. C. J. *Treby*. My lords, I think there can be no difference of opinions in this case: For it is plain there was an unlawful action in which they did agree, (as a riot or assault to beat or wound a man or the like) and if death had ensued, they both had been guilty of murder, as well he that looked on, as he that gave the mortal wound. But then the question added further, that the action to which they agreed was fully over, and there only happeneth to be a continuance of their presence together; and there being an old grudge between one of the parties and a third man, and the party who had that old grudge, meeting with his enemy, executeth it then upon him, and murdereth him; this doth in no sort affect the other that was present, and had joined in the former unlawful action that was over. In the former, he did join and concur, and therefore if death had ensued, they had been both guilty: In the latter, he did not join and concur; and therefore though murder did happen in his presence and company, he is not guilty, but only the party that actually killed is.

Just. *Nevill*. My lords, I am of the same opinion.

L. H. *Stew*. If you are all of the same opinion, I think you need say no more.

Judges. We are all of the same opinion, my lords.

L. H. *Stew*. My lords, all the Judges are of the same opinion; and now I think it is your lordships resolution to adjourn to the House.

Lords. Aye, aye.

L. H. *Stew*. This court is adjourned to the House of Lords.

And then the Lords returned to their House in the same order, and there presently adjourned till the next morning.

SATURDAY, February 4.

About four of the clock in the afternoon, the lords came from their house in the former order into the court in Westminster-Hall: and being seated on their benches, and his grace the lord high-steward in the chair before the throne, proclamation was made for silence; and the judgment of the peers was demanded, and delivered in this manner.

L. H. *Stew*. My lords, your lordships have now heard all the evidence both against the prisoner and for him: the next thing is your lordships judgment, and for that the method is this, your lordships opinions are to be delivered in the absence of the prisoner. The

Question that your lordships are to deliver your opinion about will be this:

‘Whether my lord Mohun be Guilty of the murder of William Mountford whereof he stands indicted, or Not guilty?’

The order of delivering your Opinions must be, to begin with the youngest baron, and so upwards; and therefore I must desire your lordships to allow me to take your judgments distinctly, and that I may write them down.

Lords. Ay, ay.

L. H. *Stew*. My lord Lemster, Is my lord Mohun guilty of the murder whereof he standeth indicted, or not guilty?

The lord Lemster stood up in his place uncovered, and laying his right-hand on his breast, pronounced his judgment thus:

Not guilty upon my honour.

The same question was severally asked of all the lords, who in the same form delivered their opinions as followeth:

L. Capel. Guilty upon my honour.

L. Ashburnham—L. Cholmondley—L. Godolphin—L. Osborne—L. Arundel of Trerice—L. Crew—L. Cornwallis—L. Granville—L. Berkley of Stratton—L. Lexington—L. Lucas (severally,) Not guilty upon my honour.

L. Clifford of Lansborough—L. Colpeper (severally) Guilty upon my honour.

L. Vaughan—L. Jermyn—L. Leigh—L. Lovelace—L. Brooke—L. Hunsdon—L. Chandos—L. Willoughby of Parham—L. Evers—L. Fitzwalter—L. Morley—L. Berkley of Berkley—L. De-la-Ware—L. Willoughby of Eresby—Visc. Villiers—Visc. Longueville (severally) Not guilty upon my honour.

Visc. Weymouth. Guilty upon my honour.

Visc. Newport. Not guilty upon my honour.

Earl of Warrington. Guilty upon my honour.

E. of Scarborough—E. of Marlborough—E. of Montague, (severally) Not guilty upon my honour.

E. of Monmouth. Guilty upon my honour.

E. of Falconberg. Not guilty upon my honour.

E. of Portland. Guilty upon my honour.

E. of Abingdon. Not guilty upon my honour.

E. of Rochester—E. of Nottingham, (severally) Guilty upon my honour.

E. of Radnor—E. of Macclesfield—E. of Feversham—E. of Craven—E. of Carlisle—E. of Bath—E. of Essex, (severally) Not guilty upon my honour.

E. of Sandwich. Guilty upon my honour.

E. of Scarsdale—E. of Sunderland—E. of Thanet—E. of Chesterfield—E. of Carnarvon, (severally) Not guilty upon my honour.

E. of Kingston. Guilty upon my honour.

E. of Stamford—E. of Rivers—E. of Mulgrave—E. of Manchester, (severally) Not guilty upon my honour.

E. of Westmoreland. Guilty upon my honour.

E. of Bullingbrook—E. of Clare—E. of Denbigh—E. of Northampton. (severally) Not guilty upon my honour.

E. of Bridgwater. Guilty upon my honour.

E. of Bedford—E. of Huntingdon—E. of Kent—E. of Shrewsbury, (severally) Not guilty upon my honour.

E. of Oxford. Guilty upon my honour.

E. of Dorset (Lord Chamberlain)—Earl of Devon (Lord Steward)—Earl of Lindsey—(Lord Great Chamberlain)—Marq. of Hallifax—Duke of St. Albans—D. of Northumberland—D. of Ormond.—D. of Somerset—D. of Norfolk, (severally) Not guilty upon my honour.

E. of Pembroke. (Lord Privy Seal) Not guilty upon my honour.

Then his grace the Lord High Steward stood up uncovered, and laying his right hand on his breast, pronounced his grace's own Judgment thus :

L. H. Stew. My opinion is, that my lord Mohun is not guilty upon my honour.

Then his Grace seated himself again in the chair, and numbered up the opinions of the Peers.

L. H. Stew. My lords, I have carefully taken your lordships opinions, and find the numbers to be thus : my lords that have found my lord Mohun to be Guilty are fourteen ; my lords that have found him Not Guilty are sixty-nine. Call for the Prisoner.

Proclamation was made for the chief governor of the Tower to bring forth the body of the Prisoner, and he was brought to the bar

as before : and proclamation for silence was made.

L. H. Stew. My lord Mohun, you have been indicted for the murder of William Mountford ; upon your arraignment you have pleaded Not Guilty, and have put yourself upon the judgment of your peers ; and your peers have considered what hath been said both for and against you, and the judgment of my lords is this, that your lordship is Not Guilty : your lordship is therefore discharged. Make proclamation for dissolving the commission.

Cl. of Crown. Serjeant at arms, make proclamation.—*Serjeant.* O Yes.

Cl. of Crown. Again.—*Serjeant.* O Yes.

Cl. of Crown. Again.—*Serjeant.* O Yes.

Cl. of Crown. My lord high steward of England his grace doth straightly charge and command all manner of persons who have given their attendance here, to depart hence in the peace of God, and of our sovereign lord and lady the king and queen ; for his grace the lord high steward of England intendeth to dissolve his commission.

Which the Serjeant at Arms repeated, and at the end of it, his Grace standing up, and holding the White-Staff in both his hands, broke it in two, by which his commission was dissolved.

Marq. of Carmarthen. Is it your lordships pleasure to adjourn to your own house ?

Lords. Ay, Ay.

Marq. of Carmarthen. This house is adjourned into the House of Lords.

And then the peers returned to their own house in the same order.

572. The Proceedings against Dr. THOMAS SPRAT, Bishop of ROCHESTER,* before the Lords of the Privy Council, concerning a Plot to restore King James the Second: being, a RELATION of the late wicked Contrivance of STEPHEN BLACKHEAD and ROBERT YOUNG, against the Lives of several Persons, by forging an Association under their Hands. In two Parts. The first Part being a Relation of what passed at the three Examinations of the said Bishop by a Committee of Lords of the Privy-Council. The second being an Account of the two above-mentioned Authors of the Forgery: 4 WILLIAM & MARY, A. D. 1692. [Written by the BISHOP Himself.]

PART THE FIRST.

A RELATION OF WHAT PASSED AT THE THREE EXAMINATIONS OF THE BISHOP OF ROCHESTER BY A COMMITTEE OF LORDS OF THE PRIVY COUNCIL.

I THINK it becomes me, as a duty which I owe to my country, and to the character I have the undeserved honour to bear in the church, to give the world some account, how my innocence was cleared from the late wicked contrivance against me; in hopes that this example of a false plot, so manifestly detected, may be, in some sort, beneficial to the whole nation on the like occasions for the future: however, that the enemies of the church may have no reason to cast any blemish upon it, from the least suspicion of my guilt; and that this faithful memorial may remain as a poor monument of my own gratitude to Almighty

* Of this very sorry prelate, see some particulars in vol. 9, p. 362, et seq.; and the present volume, p. 492. It may be not unreasonably conjectured that Pope had in his thoughts the character of this man, when, in the second book of the *Dunciad*, he wrote of

“A low-born, cell-bred, selfish, servile band,
“Prompt or to guard or stab, or saint or damn,
“Heaven’s Swiss, who fight for any God, or man.”

Although, as we have seen, Sprat readily enough acted under king James’s illegal ecclesiastical commission, yet, when king William, in the hope of promoting union between Protestants of different denominations, issued a commission to several bishops and other divines of the Church of England, to consult about and prepare such alterations as might be thought necessary, Sprat questioned the legality of such a commission, and would not act under it. The words of the Commission were as follows:
“We, out of our pious and princely care for

God, to whose immediate protection I cannot but attribute this extraordinary preservation.

Perhaps my Reader, at first view, will look on this relation as too much loaded with small particulars; such as he may judge scarce worth my remembering, or his knowing: but he will pardon me, if I presume that nothing in this whole affair ought to appear little, or inconsiderable, to me at least, who was so nearly concerned in the event of it.

I have therefore made no scruple to discharge my weak memory of all it could retain of this matter; nor have I willingly omitted any thing, though never so minute, which I thought might serve to fix this wonderful mercy of God the more on my own mind; or did any way conduce to the saving of divers other innocent persons lives, as well as mine.

I cannot indeed promise, that I shall accurately repeat every word or expression that fell from all the parties here mentioned: or

the good order, and edification, and unity of the Church of England, committed to our charge and care; and for the reconciling, as much as is possible, of all differences among our good subjects, and to take away all occasions of the like for the future, have thought fit to authorize and empower you, &c. and any nine of you, whereof three to be bishops, to meet from time to time, as often as shall be needful, and to prepare such alterations of the Liturgy and Canons, and such proposals for the reformation of ecclesiastical courts, and to consider of such other matters, as in your judgments may most conduce to the ends above mentioned.”

Sprat, and Watson of St. Davids (‘*par nobile fratrum*’) were the only bishops who refused to sign the Association which was entered into by the House of Lords upon occasion of the Assassination Plot in 1696.

Sprat was one of the three Bishops who sentenced Johnson. See vol. 11, p. 1339, of this Collection.

that I shall put all down in the very same order as it was spoken, having not had the opportunity to take notes of every thing as it passed. But this I will say; if I shall not be able to relate all the truth, yet I will omit nothing that is material: I will, as carefully as if I were upon my oath, give in all the truth I can remember, and nothing but the truth.

What I write I intend shall consist of two parts: the first, to be a narrative of the plain matter of fact from my first being taken into custody, May 7, to the time of my last dismissal, June 13. The second, to contain some account of the two perjured wretches, that were pleased, for what reasons they know best, to bring me into this danger.

For the truth of the substance of what I shall recollect on the first head, I am bold to appeal to the memories of those honourable lords of the council, by whom I was thrice examined. And, touching the second, I have by me so many original papers, or copies of unquestionable authority (which I am ready to shew any worthy persons who shall desire the satisfaction) as are abundantly sufficient to justify all that I shall think fit for me to say against Blackhead and Young; especially against Young.

It was on Saturday, the 7th of May, of this present year 1692, in the evening, as I was walking in the orchard at Bromley, meditating on something I designed to preach the next day, I saw a coach and four horses stop at the gate, out of which two persons alighted. Immediately I went towards them, believing they were some of my friends coming to give me a visit. By that time I was got to the gate, they were entered into the hall, and met me about the middle of the court. The chief of them perceiving me to look wistly on them, as being altogether strangers to me, said, My lord, perhaps you do not know me: my name is Dyve; I am clerk of the council, and here is one of the king's messengers. I am sorry I am sent on this errand; but I am come to arrest you upon suspicion of high treason.

Sir, said I, I suppose you have a warrant for so doing; I pray let me see it. He shewed it me: I read it; and the first name I lighted on being the earl of Nottingham's, I said, Sir, I believe this is my lord Nottingham's own hand, and I submit. What are your orders how to dispose of me? My lord, said he, I must first search your person, and demand the keys you have about you. My keys I presently gave him. He searched my pockets and found no papers, but some poor notes of a sermon, and a letter from Mr. B. Fairfax about ordinary business.

Now, says he, My lord, I must require to see the rooms to which these keys belong, and all the places in the house where you have any papers or books. I straight conducted him upstairs into my study. This, Sir, said I, is the only chamber where I keep all the books and papers I have in the house. They began to search, and with great readiness turned over

every thing in the room, and closets and presses, shaking every book by the cover, opening every part of a chest of drawers, where were many papers, particularly some bundles of sermons; which I told them were my proper tools, and that all that knew me, could vouch for me: it was not my custom to have any treason in them. They read several of the texts, and left them where they found them. But in one corner of a press, which was half open, they met with a great number of letters filed up. I assured them they were only matters of usual friendly correspondence, and most of them were of last year's date. Mr. Dyve looking on some of them, found them to be so; and said, If he had time to view them all, he might, perhaps, see reason to leave them behind; but being expressly commanded to bring all letters, he must carry them with him. I left him to do as he pleased; so they sealed them up.

Then they went into my bed-chamber, and the closets adjoining, doing as they had done in my study, feeling about the bed and hangings, and knocking the wainscoat in several places, to see if there were any private hole, or secret conveyance.

After that, they came down stairs, and searched the parlour and drawing room on that side of the house with the like exactness. In all these rooms I observed they very carefully pryed into every part of the chimnies; the messenger putting his hand into every flower-pot, which I then somewhat smiled at: but since I found he had but too much reason so to do.

When they had done searching in all those rooms, and in the hall as they were going out, and had taken with them what papers they thought fit, they carried me away in the coach that brought them. By the way, we met my servant, Mr. Moor, coming from London: I called out to him, Have you any letters for me? He gave me three or four, which I delivered to Mr. Dyve to open, who found nothing in them but matters of private concernment, or ordinary news. And so between ten and eleven at night, we arrived at Whitehall, and I was brought to my lord Nottingham, whom I found alone in his office.

My lord, said I, I am come upon your warrant; but certainly there must be some great mistake, or black villainy in this business: for I declare, as in the presence of God, I am absolutely free from any just accusation relating to the government. His lordship told me, He himself was much surprized when he heard my name mentioned. I intreated him I might be examined that night, if any witnesses could be produced against me. He said, that could not possibly be, because, the lords, who had the management of such affairs, were separated, and gone home: But that I was to appear before them the next day; and in the mean time, all the civility should be shewn me, that could be expected by a man in my condition.

My lord, said I, I hope, it being so very late,

you will suffer me to lie at my own house at Westminster. He replied, You shall do so ; but you must have a guard of soldiers and a messenger with you. A guard of soldiers, said I, my lord, methinks is not so necessary to secure one of my profession ; I should rather offer, that I may have two or more messengers to keep me, though that may put me to greater charges. My lord, said he, I, for my own part, would be glad if I might take your parole ; but I must do what I may answer to others, and therefore I pray be content.

At this I acquiesced : only adding, My lord, here are divers papers brought up with me, which, upon my credit, are but of common importance ; yet, because they are most of them private talk among friends, there may be some expressions, which no man, if it were his own case, would be willing to have divulged ; and therefore I desire your lordship will take care they may not be shewn to the prejudice of any. He answered, you have to do with men of honour ; and you shall have no occasion to complain upon that account.

And so I was conveyed home to Westminster, by Mr. Dyve and Mr. Knight, messenger, in the coach with me, and a guard attending on each side. After we came to the deanery, Mr. Dyve having diligently surveyed my lodgings, and the avenues to them, left me about midnight, with a strict charge to the messenger and soldiers, not to give me any unnecessary disturbance ; but to watch carefully at my bed-chamber door, until further orders, which they did.

The next day being Sunday, May the 8th, Mr. Dyve came again to me about noon, to acquaint me, That I was to attend the committee of the council that evening by six of the clock. And, says he, My lord, I suppose you have here also at Westminster, a room where you keep the rest of your books and papers. I told him, I had. Then, said he, I have a commission to search there likewise ; particularly in your cabinet. I shewed him my library, and gave him the keys. He opened all the presses of books, and viewed particularly every shelf, and examined every drawer in the cabinet : but finding nothing there of a late date, or that might afford any the least shadow of a traitorous correspondence, he went away without removing any one paper thence.

At the time appointed I was brought by the messenger and guard to Whitehall, where a select number of the lords of the council were assembled at my lord Nottingham's lodgings. There were present, (as I remember) the earl of Devonshire, lord steward ; the earl of Dorset, lord chamberlain ; the earl of Nottingham, secretary of state ; the earl of Rochester, the earl of Portland, the lord Sydney, lord lieutenant of Ireland, and sir Edward Seymour.

When I was entered the room, and come to the end of the table, my lord Nottingham began.

Earl of Nottingham. My lord, you cannot

but think it must be some extraordinary occasion which has forced us to send for you hither in this manner.

Bishop of Rochester. My lord, I submit to the necessities of state, in such a time of jealousy and danger as this is.

Earl of N. My lord, I am to ask you some questions, to which we desire your plain and true answers.

Bishop of R. My lords, I assure you mine shall be such ; as, I hope, I have been always taken for a man of simplicity and sincerity.

Earl of N. Have you composed a Declaration for the present intended descent of the late king James into England ?

Bishop of R. I call to God to witness, I have not.

Earl of N. Did you ever draw up any heads, or materials for such a Declaration ?

Bishop of R. Upon the same solemn asseveration, I never did.

Earl of N. Were you ever solicited, or applied to by any person, for the undertaking such a work ?—Bishop of R. I never was.

Earl of N. Do you hold any correspondencies abroad in France ?

Bishop of R. I do not hold any.

Earl of N. Have you ever signed any Association for restoring the late king James ?

Bishop of R. I never signed any.

Earl of N. Do you know of any such Association ? Or any persons that have subscribed one ?

Bishop of R. Upon the word of a Christian, and a bishop, I know of no such thing ; nor of any person who has subscribed any paper of that nature.

Sir Edward Seymour. My lord bishop of Rochester, We have examined the papers that were seized in your closet at Bromley : we find nothing in them but matters of ordinary and innocent conversation among friends ; only we have one scruple, that there are few or no letters among them written since Lady-day last.

Bishop of R. Sir, I suppose there may be some of a date since that time in the bundles : if I had preserved more, they would have been of the same nature with the rest that you have, that is, concerning common intelligence, and the talk of the town ; not any secrets of state, or against the government. My lords, I hold no correspondencies of that kind. When I am in the country, I desire some friend or other here, to let me know how the world goes, that I may inform myself, and the neighbouring gentlemen, of the truth of things, and prevent the spreading of false news : and afterwards I file up such letters, according to their dates (as you may perceive I did these), that at any time I may have a present recourse to them to refresh my memory in any past transaction. My lords, Those are all I thought worth keeping of this kind these two last years : and I hope the clerk of the council has done me the justice to acquaint your lordships, how I was apprehended, out of my house ; and how narrowly I myself, and my study, and lodging-

chamber, and other rooms, were searched: so that it was impossible for me to have suppressed or smothered any one writing from you; and really I believe there was not a note, or least scrip of paper of any consequence in my possession, but they had a view of it.

Earl of *Devon*. But, my lord, it is probable, a man of your interest and acquaintance, must have received more letters since than are here to be found. We see here are many concerning affairs that passed just before that time.

Bishop of *R.* My lords; a little before the conclusion of the last session of parliament, I obtained leave of the House of Lords to retire into the country for the recovery of my health. During my abode there, as long as the parliament continued, I was somewhat curious to learn what passed in both Houses; and therefore, as your lordship has observed, letters came thicker to me about that time: but when the parliament was up, very little happening that was remarkable in that interval, I was not so mindful to preserve the letters that came to me, whilst all things, both abroad and at home, were rather in preparation than action. Besides that, since the time your lordship speaks of, I was twice or thrice in town for several days together; once especially, upon a public occasion, the annual election of Westminster school, which detained me here about a week: and these are the true reasons why you find so few letters to me since the date of time your lordships have mentioned.

Earl of *N.* Will it please your lordships to ask the bishop of Rochester any more questions?

They being all silent, I said,

My lords; I cannot imagine how it comes to pass, that I should be thus suspected to be guilty of any contrivance against the government: I think I may appeal to all that know me, I am sure I may to all my neighbours in the country, where I live, that there has no man submitted to it more peaceably and quietly than I have done, ever since the Revolution; and I must own, I did it both upon a principle of conscience and gratitude. Of conscience; because I cannot see how the Church of England, and the whole Protestant religion, can be preserved, but upon this foundation; since an invasion from France cannot but be destructive to both. And of gratitude; because, as you all know, I happened to be, in the late reign, engaged in an affair, which since I have been taught was illegal. [The Ecclesiastical Commission.] And though I may say, I stopped betimes, and did no great hurt, but hindered, as much as I could, whilst I acted; yet I acted so long, that I might have expected to be severely punished for what I did. But the king and queen's part, in the general pardon, was so gracious and benign, in making it their own act, and not excluding me out of it, that their majesties have thereby laid on me an obligation never to be forgotten.

Upon this I was bid to withdraw; and about an hour after, the same clerk of the council was

sent to tell me, The lords had ordered I should return to my own house, and be under the same confinement as before, of a messenger, and a guard of soldiers: and there I should shortly hear what their lordships would determine concerning me. He likewise told the messenger and the guards, That he had a strict command to them, to use me with all respect; only to take care that I should be safely kept, and forth-coming. Nor indeed had I any thing to object against their behaviour: for, as Mr. Dyve demeaned himself always to me like a gentleman, and the messenger was very civil, so the soldiers themselves were as easy and quiet to the rest of my family, as if they had been a part of it.

The same evening Mr. Dyve came home to me, and brought me all my papers, telling me, That the lords had heard him read them over: and, having no exception against them, had sent him to return them all safe to me again.

Thus guarded, I continued from that day, till the 18th of May, under the custody of a messenger, and of four centinels, who watched day and night, and were relieved every eight-and-forty hours.

But then, having heard nothing in the mean time from the lords, I wrote this letter to the earl of Nottingham:

"My Lord;

"As I have all this while, according to my duty to their majesties government, with patience and humility submitted to my confinement under a guard of soldiers and a messenger; so now, fearing that my longer silence may be interpreted as a mistrust of my innocence, I think it becomes me to make this application to your lordship, earnestly entreating you to represent my condition and request to the most honourable board, where I was examined. I entirely rely on their justice and honour, that, if they find nothing real against me, (as God knows, I am conscious to myself they cannot) they would be pleased to order my enlargement. I am forced to be the more importunate with your lordship in this business, because it is very well known, in what a dangerous condition of health I went out of town towards the latter end of the session of parliament: and I find my distemper very much increased by this close restraint, in a time when I was just entering upon a course of physic in the country. My lord, I am, &c.

"May 18, Westm. "THO. ROFFEN."

"To the Right Hon. the Earl of Nottingham, Principal Secretary of State."

This letter was read in the cabinet council that day, and it had the desired effect; for thereupon I was ordered to be discharged that evening; which accordingly was done at ten at night, by Mr. Shorter, a messenger of the chamber, coming to my house, and dismissing the messenger, and taking off the guard.

The next morning, being May the 19th, to prevent any concourse, or congratulations, usual upon such occasions, I retired early to

Bromley, where I remained quiet till June the 9th, little dreaming of a worse mischief still hanging over my head.

But that day, being Thursday, as I was upon the road, coming to Westminster, to the meeting of Dr. Busby's preachers, who assemble once a term at my house there, I was stopt by a gentleman, that brought me this letter from my lord Nottingham.

"My Lord; *Whitehall, June 8, 1692.*

"I must desire your lordship to be at my office on Friday morning by ten of the clock.—I am, &c. NOTTINGHAM."

"For the Right Rev. the Lord Bishop of Rochester, at Bromley."

I asked the bearer, whether he had any farther orders concerning me? He answered, No: But was forthwith to return. I desired him to acquaint his lord, that I was now going to town upon other business, but that I would presently wait on him at Whitehall: accordingly from Lambeth I went to his office. When my lord came to me, I told him, that having met with his lordship's letter accidentally in my way to Westminster, I thought it best to come presently to know his pleasure.

Earl of N. My lord, there is a mistake; I gave you notice to be here to morrow morning; and that is the time you are appointed to appear before the committee of the council.

Bishop of R. However, my lord, being in town occasionally, I thought it became me to present myself to you as soon as I could: And I now make it my request, if your lordships have any thing farther to say to me, I may be convened before you this day.

Earl of N. I fear you cannot be so, for there is much business to be this afternoon, both at the great council, and the committee; but I will send you word to the deanery, if you can be called this evening: In the mean time you have your full liberty to go where you please.

Thus I went home; but having no notice from my lord that night, the next day, being June the 10th, about ten of the clock, I came to his lordship's office, where were met the same lords as before; only, I think, the earl of Portland was not there, and the earl of Pembroke, lord privy seal, was.

When I was called in, besides the privy counsellors that sat about the table, there was standing against the wall a very ill-favoured man, who afterwards proved to be Blackhead; with whom I straight perceived I was sent for to be confronted. For, as soon as I was in the room, my lord Nottingham said, My lord, do you know that person?

Bishop of R. My lords, I have seen this man's face, but I cannot immediately recollect where.

Earl of N. I pray view him well. Has he never brought you any letters from one Mr. Young?

Bishop of R. I do call to mind, he has brought me a letter. I cannot in a moment remember from whom it was.

Earl of N. He says it was from one Young.

Bishop of R. I think it was at my house at Bromley that he delivered it me; but I verily believe, it was not from any of the name of Young.

Blackhead. I was with the bishop of Rochester at Bromley: I brought him a letter from Mr. Young, and I received an answer to Mr. Young, back again from the bishop.

Thus far, during the beginning of this examination, I stood with my face against the window, and my eyes being so very tender and feeble as they are, I had not a perfect view of Blackhead; but he so confidently affirming, that he had of late carried letters between me and one Young, I changed my station, and got the light on my back; and then immediately, having a true sight of his very remarkable countenance and habit, and whole person, and being also much assisted by his voice, which is very loud and rude, I did (by God's blessing) perfectly call him to mind.

Bishop of R. Now, my lords, by the advantage of this light, I do exactly remember this fellow, and part of his business with me at Bromley. What he says of Young cannot be true. I know not for what purpose he affirms this; but upon my reputation, it is utterly false, that he ever brought me a letter from one Young.

Earl of N. My lord, he says particularly, it was upon a fast day.

Bishop of R. My lords, I do remember this fellow was with me at Bromley on a fast day: by the same token, I told him, he should stay till after evening prayers, and must expect only a fasting kind of meal. But then I would return an answer to his business.

Blackhead. It was upon a fast day. I did eat with the bishop's servants; and I received an answer from his own hand, to the letter I brought him from Mr. Young.

Bishop of R. My lords, this that he says of Young is a wicked lye; All my correspondencies are so innocent (as I hope your lordships can testify) that, if I had received a letter from any Mr. Young, I should have no reason so positively to deny it. I beseech you, examine this fellow thoroughly, and I doubt not but you will discover some impudent knavery. I stand to it; I am sure there is no person whose name is Young, with whom I have of late years maintained any intercourse by letters.

Earl of Devonshire. My lord, is there no person of the name of Young, a clergyman, with whom you are acquainted?

Bishop of R. Oh! My lord, there are two excellent persons of the name of Young, both clergymen, to whom I have the good fortune to be very well known: The one was your brother Ossory's chaplain, and, is now prebendary of Winchester; the other was canon of Windsor when I was a member of that church, and is there still. But I suppose, neither of these are the Youngs, whose correspondence this man objects to me; I

should take it for an honour to correspond with them. But, in truth, it has so happened, that I have neither written to, nor received one letter from either of them these many years, to the best of my knowledge.

Blackhead. The bishop, if he please, may remember it was Robert Young, from whom I brought him a letter.

Earl of *N.* How long ago say you it was?

Blackhead. It was about two months ago.

Bishop of *R.* I have, indeed, my lords, some obscure remembrance, that some years ago, there was one writ to me out of Newgate, under the name of Robert Young, pretending to be a clergyman; and I recal something of the contents of his letter. It was to tell me, That he and his wife lay in prison there upon a false accusation, of which he hoped they should be speedily cleared. In the meantime, he desired me to recollect, that he had officiated some weeks for the chaplain at Bromley-college, and had preached once or twice in the parish-church there. He intreated me to give him a certificate of this, because it would stand him in much stead, in order to his justification: And withal, that I would send him something out of my charity, for his and his wife's relief in their great distress. This, my lords, I dare say, was the whole substance of that letter; and this was two or three years ago at least.

To that letter I am sure I made no reply in writing. Only, having not the least remembrance of him myself, I enquired in the neighbourhood, and among the widows in the college: intending to have sent him some alms suitable to his condition and mine, had I found him worthy. But upon enquiry, I received from all hands so very ill a character both of this Young and his wife, that I resolved to give him no answer at all; and I have never heard any thing more of him to this day.

But now, I beseech your lordships, to give me leave to speak to this person myself: and they intimating I should do as I thought best, I said to him; I conjure you, in the presence of these noble lords, and especially of the great Lord of heaven and earth, that you will declare the truth of what I am going to ask you.

When you came to my house at Bromley, upon a fast-day it was, I think the first fast of this year; did not you desire to speak with me, as having a letter for me? When I came to you into my hall, did not you first kneel down, and ask me blessing? Did you not then deliver me a letter, affirming it was from a country minister, a doctor of divinity? Did not you tell me, you were his servant, or bailiff? And that your master had sent you on purpose, many miles, to receive an answer yourself to that letter from my own hand?

Blackhead. I never brought a letter to the bishop of Rochester from a country minister; I know no such doctor of divinity: nor ever was servant to any: I only brought a letter to the bishop from Mr. Young.

Bishop of *R.* My lords, what I say is most certainly true. This man had never any other

business with me, but in relation to that letter, pretended by him (for now I find it was but a pretence) to be written to me by an eminent country divine in Buckinghamshire, a person of a considerable estate, as he told me. My lords, I cannot yet call to mind the doctor's name; but the business of the letter I am in great part master of, and it was to this purpose: that there was a person, (naming him,) who had applied to him to be his curate; but that he had reason to suspect he had counterfeited my hand and seal for holy orders: therefore he desired me to send him word under my own hand by the bearer, his man, whether I had ordained such a one, in such or such years: that if I had, he would encourage and entertain him; if not, he would take care he should be punished for his forgery.

Now, my lords, upon the receipt of so friendly a letter by this very messenger, I bid him stay a little, and I would give his master satisfaction out of my books, whether I had ordained any man of that name; which I thought I had not. Accordingly, my secretary, and I, did severally turn over all my papers relating to such affairs, as carefully as we could; and finding no such man's name in them; in which we could not be easily deceived, because I keep methodically (as, no doubt, every bishop does) all recommendations, subscriptions, testimonials, and titles of those I admit into orders; I wrote the supposed author of the letter as civil an answer as he seemed to deserve.

That I was extremely pleased, and thankful, that a mere stranger to me should be so careful of my reputation: that my secretary, and I, had diligently examined all the books where such things are recorded: and I could assure him, I never had ordained any such person either priest or deacon, within the space limited in his letter, or at any other time: that I should look upon it as a signal service done to the church in general, and a special favour to me in particular, if he would, as he promised, cause the counterfeit to be apprehended, so that the course of law might pass upon him.

This letter, my lords, all written with my own hand, I delivered to the person here present: and he went away with it, asking me blessing again upon his knees, and promising I should speedily be made acquainted with the success.

Earl of *Devonshire.* I pray, my lord, how was the letter superscribed you sent back by this man?

Bishop of *R.* My lord, it was to the same person, with the same superscription as he subscribed himself, and directed to the same place, where he said he was minister; though the name of place or minister I cannot yet recover. But let that letter of mine be produced, and it will put an end to this whole controversy.

Blackhead. The letter I received from the bishop, was superscribed to Mr. Young, and to no other.

Bishop of *R.* My lords, this is a horrid false-

hood. I well remember now, this fellow was at my house a second time, some weeks after the first. When he came, I was in the garden with some gentlemen, my neighbours; where, first asking me blessing, he told me, his master, the doctor, had taken up the person who had forged my orders: that the man stood upon his vindication; but that his master was bringing him up to London; and then I should hear farther from him: adding, that his master was a man of such a spirit, and such a plentiful estate, that whenever he suspected a man to be a rogue, or a cheat, he would spare no pains to discover him, nor think any cost too much to get him punished. These, my lords, I well remember, were the knave's very words: and I hope your lordships will likewise deal with him in the same manner. I took this second message still more kindly, and ordered my servants to entertain the messenger very civilly.

Blackhead. I brought no such message. All my business with the bishop was from Mr. Young, which I suppose was of another nature.

Bishop of R. What I say is so true, that I am confident several of my servants do remember the particulars. For this man stuck not to declare his business before them all; very much magnifying his master, and his house-keeping, and vapouring what an example he would make of the counterfeit priest, without putting me to any trouble or expence.

Earl of Devonshire. Has your lordship none of those servants near at hand?

Bishop of R. My lord, some of them are in town; and one, my secretary, Mr. Moore, by an accidental good fortune, came hither with me: He was without when I was called in. I doubt not but he will satisfy your lordships what was this man's errand to me: He is a young man of great honesty, and, I believe, would not tell a lie to save my life: I am sure I would not have him.

Whilst they were calling in Mr. Moore, I added; My lords, I appeal to the great God of heaven to judge between me and this wretch, touching the truth or falshood of what we say, and to deal with us both accordingly at the last Day of Judgment: and I dare also appeal to your lordships to judge between us by what appears to you: For did you ever see greater villainy, and consciousness of guilt in any man's countenance than in his?

By this time, Mr. Moore being come in, I said, Moore, apply yourself to my lord Nottingham. I charge you, do not, for any consideration of me, speak any thing which you cannot justify for truth.

Earl of N. Mr. Moore, do you know that person there? (Pointing to Blackhead.)

Mr. Moore. My lord, I do know him so far, that I have seen him once or twice at my lord's house at Bromley.

Earl of N. What business had he at Bromley?

Mr. M. The first time he brought a letter to my lord.

Earl of N. From whom?

Mr. M. My lord, it was from a country minister in Buckinghamshire, a doctor of divinity, as he wrote himself; his name was Hooke.

Bishop of R. My lords, I now very well remember that was the name, Hooke, or something very near it. There may be the difference of a letter: I will not stand upon that, or can it be expected I, or my servant, should be positive as to every letter of a name, in so sudden a question.

Earl of N. Mr. Moore, what was the business of that letter?

Mr. M. My lord, it was concerning one that offered himself to be the doctor's curate, whom he suspected to have counterfeited my lord's letters of orders. The doctor desired my lord to look into his books, whether he had ordained any such person. My lord and I did thereupon search all the places where the memorials of such affairs are kept, and we found no such name; and so my lord himself wrote back to the doctor, by this very man that stands here.

Earl of N. Mr. Moore, will you take your oath of all this?

Mr. M. I am ready to take my oath of it, if you please to give it me.

Earl of N. What say you, Blackhead? You see here is a young man, the bishop's secretary, comes in by chance, and confirms punctually what the bishop had said before, concerning your message to his lord; and he offers to take his oath of it. If you did bring a letter from one Dr. Hooke, why do you not confess it? It can do you no hurt.

Blackhead. I know of no such divine as Dr. Hooke; nor any thing concerning one that counterfeited the bishop's orders. The letter I brought was from Mr. Young.

Mr. M. My lord, this fellow cannot but know, that what he says is shamefully false; I assure you, I have the original letter at home to produce; and doubt not but divers of my lord's servants remember him, and his business, as well as I do: For he was a second time at Bromley, some weeks after.

Earl of N. What was his business then?

Mr. M. He said, he came to acquaint my lord, that his master, Dr. Hooke, had seized on the person who had forged his orders. My lord asked him, Whether he had also seized the false instrument? And if he had, desired it might be transmitted to him. This man answered, He believed his master had got it: That he was coming up to London, and bringing the cheat with him; and had been there sooner, had he not sprained, or hurt his leg: But when he was come, the doctor would give my lord notice, or himself wait upon him. My lord was much pleased with this second message, and gave orders to have the bringer of it well used. He was so; and freely discoursed with the butler, and the other servants, touching his business there. So that I am verily persuaded several of them remember all these

circumstances of it, and perhaps more than I do.

Upon this, Blackhead being again urged by the lords with so plain a testimony, perfectly agreeing with what I had said, and he still persevering obstinately to deny every part of it; I, and Mr. Moore were ordered to withdraw, Blackhead staying behind.

As I was going out, I said, My lords, I cannot comprehend to what purpose this fellow persists in this lie; I am sure he can never prove that I have injured the government in word, or deed, or writing. Then I could not but again observe to the lords, what visible marks of falshood and treachery there were in Blackhead's face: for, indeed, all the while he looked as if he would have sunk into the ground; though, as I was told afterwards, before I came into the room, he had appeared very brisk, and bold, and full of talk. But, upon my first coming in, his complexion, which was naturally very sallow, turned much paler and darker; and he was almost speechless, saying nothing to any purpose, more than what he thought was necessary to keep him from the main lie, That he had brought me a letter from one Young, and no other.

But after my being withdrawn about half an hour, I was called in again, and Blackhead sent forth.

Earl of N. Now, my lord, the business is out, the fellow has confessed he brought the letter to you, written not in the name of Young, but as from one Dr. Hookes; Hookes was the name, not Hooke: Your lordship was in the right, in saying, you would not stand upon a letter.

Bishop of R. My lords, I could not trust my memory so far as to a letter: but one thing I was sure of, that was the only letter this rascal ever brought me; and it was not from any whose name was Young.

Earl of N. Well, that business is over, he has confessed it; and now, my lord, pray take a chair, and sit down.

Earl of Devon. Pray, my lord, sit down.

Bishop of R. No, my lords, I desire you to excuse me.

Earl of N. My lord, we have some few questions to ask you, and therefore pray repose yourself.

Bishop of R. If you please to permit me, I had rather answer what your lordships have farther to say, standing thus as I am at the table.

Earl of N. Then, my lord, we shall ask you, have you ever written to the earl of Marlborough within these three months?

Bishop of R. I think I may safely affirm, I never writ to my lord Marlborough in my life: but I am certain, and upon the faith of a bishop, I declare, I have not written one word to him these three months.

Earl of N. Have you received any letter from my lord Marlborough within these three months?

Bishop of R. I protest solemnly, I have not received any.

Earl of N. Have you received any written or printed papers from my lord of Marlborough within that space of time?

Bishop of R. As in the presence of God, I declare, I have not. My lords, I have had some acquaintance with my lord Marlborough, both in king James's court, and in the parliaments since; but I cannot call to mind that ever I wrote to him, or he to me.

Earl of N. Then I think, my lords, we have nothing more to do, but to wish my lord bishop a good journey to Bromley.

With that they all rose up, and saluted me, testifying their great satisfaction that I had so well cleared myself, and confounded my adversary. More especially two noble lords of the company, to whom, I said, I would now particularly appeal, gave me an ample testimony of their belief of my innocency in this accusation, and of my dutiful disposition to the government.

My lord Nottingham then told me, in the name of all the rest, They had no further trouble to give me. I intreated them to suffer me to add a few words: They permitting me, I said,

My lords, I heartily thank you for confronting me with this fellow; else I could not so well have made out my innocency; but I might still have lain under a suspicion, whereof I had not known the least ground. Had this been a trial for my life, I should have been glad to have such honourable persons for my judges. But now I have much more reason to bless God, that you have been my compurgators: That you are witnesses, as well as judges, of the detection of this villainy against me; whereof, I must acknowledge, as yet, I do not fathom the bottom. Wherefore I must entreat, that I may put myself under your protection for the future. For although this fountain of wickedness has been now stopped in this particular, as to myself, yet it seems to run under ground still: and unless special care be taken, it may break forth again in some other place, on some other occasion, to the ruin, if not of me, yet of some other innocent person.

Earl of Devon. No, my lord: you need never fear this fountain can break forth any more, to do you, or any other good man, any prejudice; he having been so palpably convicted of knavery and lying.

Bishop of R. My lords, I hope so: as for myself, I take my own innocency to be abundantly vindicated by this your general declaration in my favour. I make no question but your lordships will next vindicate yourselves, and the justice of the government, by bringing this wicked man to condign punishment, and by examining the main drift of his design, and who have been his accomplices.

They all assuring me I might rely upon them for it, I withdrew.

All this while I had not the least conjecture, or imagination, who this Young should be, with whom Blackhead pretended I held so

close a correspondence. But my next appearance before the Committee of the Council, will clear up what remains of the whole wicked mystery.

In the mean time, returning home that evening to Bromley, I presently met with a plentiful concurrence of evidence from most of my servants, of their discourse with Blackhead, and their knowledge of his business, in reference to Dr. Hookes's letter.

First, The butler, Thomas Warren, told me, That according to my order to use him kindly, he had done so both times he was with us: particularly the second time, he had enterained him with one of the Petty Canons of Windsor, who came thither by chance, in the parlour next the garden: that thence he brought him down into the cellar, where Blackhead drank my health with knees almost bended to the ground: that then he earnestly desired him to shew him my study: saying, I have heard your lord has a very good study of books: my master Hookes has a very good one; he often lets me go into it, and I doubt not but you have the same liberty. I pray let me see his books. The butler answered, My lord has but few books here, only such as he brings from time to time from Westminster for present use, and they are locked up in presses, so that I cannot shew them if I would. I pray then, said Blackhead, let me see the room, I hear it is a very fine one. The butler said, He could not presume to do it, without my leave. Then, said Blackhead, let me see the rest of the house. The butler excused his not being able to do it then, because there were some ladies with his mistress. The same request, he assured me, Blackhead repeated almost twenty times; but still he denied him.

Then Thomas Philips, my coachman, and John Jewel, my gardener, confirmed most of what the butler had said; all of them agreeing, that both the times he was at Bromley, especially the second, he talked publicly with them of the business he came about from his master Dr. Hookes; enlarging much in commendation of the said doctor, what a worthy man he was; what hospitality he kept; and how he would never rest, till he had brought to punishment the knave that had forged my hand and seal for orders. They added, That after I had dismissed him, he lingered about in the garden, the hall, and the great parlour, a long time; and was full of such discourses.

Moreover, the gardener, and William Hardy, the groom, and Thomas French, and one or two of the other servants, who remained at Bromley whilst I was in custody at Westminster, did all assure me, that this man who brought first the letter, and then the message, from Dr. Hookes, had been a third time at my house, whilst I was under confinement. That it was upon a Sunday, which by computation proved to be Whitsunday, May the 15th: that they found him in the midst of the house before they knew he was entered. He told them, That passing that way, he came to condole

for my mishap, and to inquire what the matter was; hoping it was not so bad as was reported at London. They answered, They knew nothing of particulars; yet doubted not but I was innocent. That he then again desired to see the house: but all the doors were locked, except the great parlour, which has no lock upon it. That he would have enticed them to town to drink with him, which they refused, but made him drink there; and he coming after dinner, they persuaded a maid-servant to provide him some meat; which she did, but unwillingly, telling them, She did not like the fellow's looks; that perhaps he might come to rob, or set the house, now so few servants were at home: that he rather looked (as indeed he did) like some knavish, broken tradesman, than an honest, rich clergyman's bailiff, or steward (as he also called himself); and it has proved since, that her conjecture was true.

All this, and more, my servants repeated to me, touching Blackhead's behaviour in my house, and his discourse concerning his master, doctor Hookes; and they offered to depose it all upon oath. And, above all, the next day, being Saturday, June the 11th, Mr. Moore coming from London, immediately found the original letter that Blackhead had brought me from the pretended doctor.

Wherefore, being furnished with all these fresh materials, especially with the letter itself, and being not a little surprised to hear that the rogue had, the second time of his coming, been so earnest to get into my study, or any of the other rooms; and that he had the diabolical malice against me, to come to my house a third time, on pretence of condoling my misfortune, which I then thought, it was probable, had chiefly proceeded from his malicious perjury against me: all this considered, I resolved to go to London on Monday morning with these servants, and to carry the letter that he brought me as from Dr. Hookes, to lay the whole business before the lords of the committee, and to desire their farther examination of Blackhead upon these particulars.

Accordingly, on Monday, June the 13th, I went, and attended the meeting of the lords that morning in the usual place. When there was a full committee, I sent to them by a clerk of the council, intreating that I might have a short audience. After some time, I was introduced: there were present (besides most of the lords before-mentioned) three others, whom I had not seen there since my first appearance before them, the marquis of Carmarthen, lord president; the lord Godolphin, and sir John Lowther.

When I came into the room, and was just going to propose the business that brought me thither, my lord Nottingham prevented me, and said,

My lord, Do you know that person there? pointing to a man, who stood behind the privy counsellors, near the door which leads into the public room.

Bishop of R. My lord, I do not know him.

Earl of N. My lord, I pray observe him well.

Bishop of R. Upon my credit, I never saw this man before in my life, to the utmost of my knowledge.

Then the person standing there, looked boldly upon me, and said, Do you not know me, my lord? Do not you remember, that I officiated some weeks at Bromley-College, for Mr. Dobson, in king James's time? And that I preached in the parish church there once or twice?

Bishop of R. My lords, I solemnly affirm, I do not know this man: I never saw him before: I never knew that he officiated in Bromley-College: I never heard him preach in the church there: he is a mere stranger to me: he may have served for the chaplain of that college in king James's time; but I was not then concerned who officiated there. He may have preached in the church, and I not have heard him; for about that time I was clerk of the closet, and was seldom or never at Bromley on Sundays, by reason of my attendance on the princess Anne of Denmark, either at Whitehall, or Windsor, or Hampton-Court, or Richmond.

The same person presently took me up, with insolent confidence, You will know me better when captain Lawe appears: I warrant you do not know capt. Lawe neither.

Bishop of R. My lords, if any of your lordships please to ask me any thing, I shall answer with all respect. But I do not understand that I am bound to satisfy this saucy fellow's questions: yet, because he has asked me so familiarly, touching my acquaintance with one captain Lawe, I assure you, I know not any such man in the world as captain Lawe. But, my lords, by this person's discourse, I am induced to believe, he may be the Young, with whom the other knave Blackhead pretended the last time that I held a strict correspondence by his means.

E. of N. This man's name is Young, Robert Young.

Bishop of R. Then, my lords, because my lord president, and some of the other lords, were not here then, I must beg leave of those that were, that I may repeat what I then remembered, concerning one Robert Young. Whereupon I recollected the substance of what I had said, of a letter I had received some years since, dated at Newgate, from one of the same name, who pretended himself to be a clergyman.

I added, It seems, my lords, by his own confession, this is the very same Young. But, as I never saw him before he was in Newgate, so I declare, upon the faith of a Christian, I never saw or heard from him since that letter: however, I am very glad you have him now: I make no doubt but he will be found, in the end, such another villain as Blackhead was proved to be on Friday last.

But, my lords, said I, the business that brought me to wait on you now, is to intreat

you to take that same Blackhead into farther examination, and to enquire a little more into his part in this wicked contrivance, whatever it is.

My lords, since I went to Bromley, my servant, Mr. Moore, has had the good fortune to retrieve the very original letter that Blackhead brought me from his counterfeit master, doctor Hookes. Then I delivered the letter at the table, and my lord Nottingham read it aloud. And to shew with what a treacherous insinuation, and plausibility of style it was written, to draw from me an answer under my own hand, I here set down the very letter itself, word for word:

"My Lord;

"Being destitute of a curate, one Mr. James Curtis came to me, who produced letters dimissory (bearing date, March 13th, 1691), and likewise letters of orders under your hand, and episcopal seal. Now, my lord, willing I am to employ any that your lordship shall recommend, and give him all the encouragement imaginable; but being since, by his own words, suspicious that his instruments are forged, I have therefore on purpose sent my man to know the truth thereof; and in order thereunto, I humbly beg your lordship to give an account in yours by this bearer, promising, for the Church of England's credit, and likewise your lordship's honour, that, if he be an impostor, I will see him brought to condign punishment for such his forgery; but if he be not, I beg your lordship's pardon for this trouble, occasioned by my candid affection for your lordship, and all clergymen, being not willing to have them imposed upon. I am your lordship's most obedient servant,

ROBERT HOOKES, D. D."

"Windgrave, April 6, —92."

Now, my lords, I thought it would be for your service to acquaint you, that I have received, from divers of my servants, a farther account of all Blackhead's demeanor, the first, second, and third time he was at my house at Bromley; for he was there a third time also, which I knew not of before I went home on Friday.

Then I summed up what has been said before, my servants were ready to depose to that purpose: concluding thus, My lords, my servants are attending without; I pray that Blackhead may be brought before them face to face, and that they may be admitted to give in upon oath what they have to say concerning him.

Upon this, several of the lords said, Send for Blackhead; and he was sent for.

But before he came, they called in Mrs. Young, the wife, it seems, of the aforesaid Robert Young; but what a kind of wife, and which of the two wives he had at one and the same time, will appear in what follows.

When she was come in, my lord Nottingham said to her, Mary Young, whence received you this paper? Taking up a paper that lay upon the table.

Mary Young. I had it from captain Lawe.

E. of N. What did he say, when he gave it you?

Mrs. Young. He bid me deliver it to my husband.

E. of N. What did he say it was?

Mrs. Young. He said it was a Sociate, or some such word.

E. of N. What! Did he deliver you a paper of this treasonable nature, in the manner as it is, to be given to your husband, without sealing it up, or inclosing it in another paper?

Mrs. Young. Yes, my lord, he did.

E. of N. Did he tell you any of the names to it?

Mrs. Young. Yes; he said, there were the late archbishop of Canterbury's, the bishop of Rochester's, and some other lords names to it.

E. of N. What passed afterwards between you about it?

Mrs. Young. I gave it my husband; and when captain Lawe came for it again, my husband said, No, these lords, whose names are subscribed, have not been so liberal in their relief of my wants as formerly; and therefore I will make another use of this paper: and so locked it up.

By this time Blackhead was brought in, and the woman ordered to withdraw, and to be kept by herself.

E. of N. Blackhead, the last time you confessed you brought the bishop of Rochester a Letter from Robert Young, under the false name of doctor Hookes.

Blackhead. Yes, I did.

E. of N. Can you know that letter when you see it?

Blackhead. I cannot tell; I doubt I cannot know it.

E. of N. Here it is; (and it was given into his hand); is that the same letter you delivered the bishop?

Blackhead. I am not sure it is.

E. of N. Consider it well; look on the superscription, you cannot but remember that. You began to be somewhat ingenious last Friday; if you relapse, it will fare the worse with you.

Blackhead. Yes, this may be the letter; this is the very same letter.

E. of N. And you received an answer to this from the bishop for Dr. Hookes, which you carried to Robert Young?

Blackhead. Yes, I did; I own it.

E. of N. But, what made you, when you were at Bromley the second time, so earnestly to desire of the bishop's butler, and his other servants, that you might see the rooms in the house, especially his study?

Blackhead. No, I do not remember that I desired to see the study: the house I might, out of curiosity.

E. of N. But here are some of the bishop's servants without, who are ready to swear, that you pressed very often to get a sight of his study; saying, you had the freedom at your master Hookes to shew any stranger his books,

and you doubted not but the butler could do the same there.

Blackhead. I cannot deny that I did desire to see the bishop's study: the other rooms I am sure I did.

E. of N. What reason had you to be so importunate to see that, or any of the other rooms? Had you any paper about you, that you designed to drop, or leave in any part of the bishop's house?

Here Blackhead stopped, as very loath to out with it; until divers of the lords urged him to tell the truth. At last he went on, though with much hesitancy.

Blackhead. Yes, I must confess I had a paper in my pocket, which I designed to put somewhere in the house.

E. of N. What did you with it?

Blackhead. I did leave it in the parlour next the kitchen.

E. of N. In what part of the parlour?

Blackhead. In the flower-pot in the chimney.

Good Lord bless me, cried I, I seriously protest, I never heard that any paper was found there by my servants. To be sure they would have brought it me.

E. of N. But, my lord, it will be worth your while to send presently to Bromley, to see whether there be any paper still, and what it is.

Bishop of R. My lord, I will send one away immediately. Only my servants are without, expecting to be sworn. Be pleased first to call them in, and dispatch them.

E. of N. Nay, my lord, there is no need of their testimony now, for this fellow has said already more than they know. He has confessed, not only that he desired to see your house, and particularly your study, but that he did it with intention to leave a paper somewhere in it; and that he did leave one in your parlour, and in the flower-pot of the chimney.

Bp. of R. Then, my lord, I will send away forthwith.

E. of N. Stay, my lord, let us first examine him a little farther. Blackhead, What paper was it you left in the bishop's chimney in the flower-pot?

Blackhead. It was the Association.

E. of N. Was it this paper here? Shewing the Association that lay upon the table.

Blackhead. Yes, it was.

E. of N. How came you by it? And who advised you to lodge it there?

Blackhead. I had it from Mr. Young, and he advised me to leave it in the bishop's house, as I did.

E. of N. Did Young direct you to put it into the flower-pot in the parlour?

Blackhead. Yes, he did; and I put it there accordingly in the flower-pot.

E. of N. But were not you a third time at the bishop's house? It was upon a Sunday, which it seems was Whitsunday.

Blackhead. I was.

E. of N. You pretended to condole for the bishop's imprisonment: it is manifest that could not be your business. What was it?

Blackhead. I was desired by Mr. Young, seeing the Association was not found by those who apprehended the bishop, to go to Bromley, and try to recover it, that being the original. I did so; I came into the house before any of the servants were aware, I went into the parlour unseen, and took the paper out of the same place where I had put it, and delivered it again to Mr. Young.

Bp. of R. My lords, I am very much surprised at all this. I cannot but admire the wonderful goodness of God in this my extraordinary deliverance. It appears by what this fellow confesses, that this forged Association was in my house, in a flower-pot, for many days together: and that it was there at the very time I was seized on by your lordships order. For he says he put it there the second time he was at Bromley, which was a pretty while before I was in hold; and took it not out 'till the third time, which was upon Whitsunday, the ninth day after I was under confinement. And by a strange and marvellous Providence, that parlour, where he says it lay so long in the chimney, was never searched or enquired after by the clerk of the council, or the messenger.

The other part of the house, on the left hand of the hall, where my study is, and bed-chamber above stairs, and a parlour and drawing-room below; all these they searched very accurately. Particularly, I well remember the messenger thrust his hand into the flower-pots in every chimney: which seemed very odd to me then: but I now understand the meaning of it.

At this, my lord Sidney, my lord Nottingham, my lord Devonshire, and some others of the council, affirmed, that they perfectly remembered, both Blackhead and Young did especially direct them to give order to those who should be sent to take me, to search all the flower-pots.

By this time, it was thought seasonable by the lords, to confront Blackhead with Young.

But in the mean while, the counterfeit Association being handed about the table, was, at length, delivered to me. It was to this purpose, as much of it as, by a transient view, I could carry away in my memory.

"That we whose names were subscribed, should solemnly promise in the presence of God, to contribute our utmost assistance towards king James's recovery of his kingdoms. That to this end, we should have ready to meet him at his landing, 30,000 men well armed. That we should seize upon the person of the princess of Orange, dead or alive; and take care that some strong garrison should be forthwith delivered into his hands: and furnish him with a considerable sum of money for the support of his army;" or to this sense.

March 20, —92.

VOL. XII.

And the forged subscriptions were, as I remember, after this manner:

Marlborough.*	Salisbury.	W. Cant.
		Tho. Roffen.
Basil Firebrace.		Cornbury.
		John Wilcoxe.

Now upon the first sight of this Paper, I presently said, I protest, my lords, I am very much amazed to see my hand so well counterfeited. All the difference is, they have done me the favour to write it finer than I can. Otherwise, I acknowledge it is so like, that I verily believe, I myself, had I seen it in another place, should have been apt to doubt whether it were of my writing or no. I am confident it might, upon the first blush, deceive the best friends I have.

But, my lords, here is another innocent person's name, whose hand I know very well. And I dare venture to say, it is even better forged than mine. I mean archbishop Sancroft's.

Lord Godolphin. My lords, I am very well acquainted with archbishop Sancroft's hand. And really it is here most exactly counterfeited.

Moreover, my lord Godolphin, my lord Sydney, and others, said, that the earl of Marlborough's hand had been so well feigned in a letter pretended to be written to Young himself, that it was very difficult for his most intimate friends to observe any distinction. And in that letter the bishop of Rochester was said to have the paper in his keeping, which appears now to have been meant of the false Association's being in my custody.

Nay, my lord Sydney assured me, these very impostors had brought him a letter, supposed also to be written by me to Young, which being but of ordinary matters, he thought not worth the keeping, but he well remembered the subscription of my name was very like this in the Association, as well indeed it might.

By this time, Young being come into the room, my lord Nottingham spoke to him; Young, look upon that letter, (shewing him his own to me, under the name of doctor Hookes) Do you know that hand?

Young. No, I don't know it.

Earl of N. Did not you send that letter to the bishop of Rochester by Blackhead?

Young. No, I know no Hookes. I never writ to the bishop of Rochester but in my own name, with my own hand.

Earl of N. What say you, Blackhead?

Blackhead. I did receive that very letter from Mr. Young's own hand, and delivered it to the bishop of Rochester with mine.

Earl of N. (Taking up the Association, and shewing it to Young,) Did not you give this Paper to Blackhead, and order him to put it

* As to the earl (afterwards the great duke) of Marlborough's correspondence with the abdicated family, see the Note to lord Oxford's Case, A. D. 1717, *infra*.

into a chimney in the bishop of Rochester's house, and into a flower-pot, if there were any?

Young. No, I never desired him to carry it thither, or to put it into a flower-pot.

Earl of N. What say you, Blackhead?

Blackhead. Mr. Young did give me that Paper, and directed me to leave it in the bishop's house; and, if I could, to put it in a flower-pot in some room; which I did, in the parlour.

Young. There is no such matter, I absolutely deny it.

Upon this, the earl of Nottingham, the lord Sydney, and some others of the counsellors, asked Young, Why then did you give us such express directions, to send and search the flower-pots, among other places in the bishop's house?

Young. I said nothing of flower-pots. I bid you take care that the bishop's person should be exactly searched; because, when he went abroad, he carried the Association about him; when he was at home, he put it in some private place, for fear of surprize: perhaps I might say in the chimney.

The lords replied, Nay, we all well remember you particularly mentioned the flower-pots.

Earl of N. Young, When you perceived that the persons sent to seize on the bishop had missed the association, did not you then desire Blackhead to go a third time to the bishop's house, and to take it out of the pot, where he had laid it?

Young. No, I know nothing of it.

Earl of N. What say you, Blackhead?

Blackhead. At Mr. Young's request, I went to the bishop's house a third time; it was upon a Sunday; I privately got into the parlour, and took the Association out of the same flower-pot where I had laid it, and returned it back to Mr. Young.

Young. This is a combination between the bishop of Rochester and Blackhead, to baffle the whole discovery of the plot.

Which saying of Young's could not but raise a general smile among all the company, they lifting up their hands with great indignation at his unparalleled impudence.

Bishop of R. I thought, my lords, the last time I was here, Blackhead was the most brazen-faced fellow that ever I saw; but now I find this same Young to be a much viler miscreant than he. This is so base a suggestion against me, and so impossible for me to be guilty of, and I know your lordships so little suspect it of me, that I need not make any answer to it in my defence.

Lord President. Young, Thou art the strangest creature that ever I heard of: dost thou think we could imagine, that the bishop of Rochester would combine with this thy confederate, to have an Association written, with his own hand to it, and then laid in his own house, in a flower-pot there; which, if it had been found, must have endangered his

life? And we see it was the most remarkable good fortune to him that almost ever happened to any man, that it was not found there.

But Young still persisting, that he believed I had taken Blackhead off, they were both ordered to withdraw. And, I assure my reader, that during this whole examination, though Young's forgery was so evidently convicted by the confession of his own companion and instrument, yet he behaved himself with a daring unconcerned confidence, with a bold and erect countenance, though it had naturally very much of a villain in it. His whole carriage indeed was such, as became the discipline he has undergone for these divers years; having so long been almost a constant inhabitant, together with his wife, of many of the common-gaols in England and Ireland*.

Then the Lord President called for the letter

* "I crave liberty to remind you what Young the parson, in conjunction with Blackhead, had contrived, in order to the murdering several of the first quality in the kingdom, besides divers gentlemen of lower degree; for these fellows, judging it too little and mean for persons of their transcendency in villainy, merely to swear that such and such had conspired to combine and restore, and re-establish king James, they had the audacious and the unprecedented impudence to forge an Association, and to counterfeit and affix the hands and names of honourable peers, and worthy persons unto it; importing, their having mutually and jointly undertook to dispossess king William, and to bring back and re-advance king James. And though it was morally impossible, as well as altogether incredible, that had there been such a design, and so concerted and stipulated, wretches of the meanness of Young and Blackhead should have been admitted upon a secret of such importance in itself, and whereof the discovery would have rendered those concerned liable to the loss of life, honour and estates: yet not only with easiness, but lechery, was the belief of it entertained, by divers of our supreme and reputed wise ministers; and notwithstanding its being in the whole matter of it, more ludicrous than farce, or Bartholomew-fair-shew, than to be entertained by statesmen, yet with what seriousness and gravity was it brought to the council-board, and received there as a subject worthy of weighty and solemn debate." See a Letter to the Right Hon. sir John Holt, knt. Lord Chief Justice of the King's-bench, occasioned by the noise of a Plot. The 2nd edit. 1694, p. 10.

And in the same Letter, pp. 11 and 12, the author says, "Nor could the ministers be so great strangers to the infamous characters of the witnesses, (whose many and notorious crimes had sufficiently published them before through the whole nation as rascals, who had forfeited all right to be believed and credited) as to hope to have their integrity and righteousness justified in seizing and prosecuting

which Young had sent to me under the name of Hookes. When his lordship had viewed it deliberately, he asked also for the Association, and having compared them for some considerable time, he broke forth in these words; Really, my lords, it is a very great providence that this letter, sent by Young under the name of Hookes, to the bishop of Rochester, was preserved by his servant; for this very letter, and the Association, were both apparently written by the same hand; you may perceive there is no manner of difference in the writing, but

any upon their testimony: and yet had it not been for the missing of the forged paper, when it was at first so narrowly searched for at the bishop of Rochester's, where one of the rogues traitorously and feloniously lodged it, it is scarce to be conceived, how some of our statesmen were prepared to have pushed on that affair to the imprisonment of several. But that misadventure, together with the defences which the aforesaid eloquent bishop, after his apprehension, made at his being examined before the council, rendered them more slow and wary in their proceeding: and thereupon, through the gaining the respite of a little time, there was an opportunity obtained, not only of discovering and laying open the many infamous and horrid crimes, whereof the rogues had at other times been guilty, but of fully detecting the 'Forgery of the Association,' and where they had secretly laid it in the bishop's house, in order to have destroyed him and others, in case it had been found by the clerk of the council and the messengers, when it was so industriously sought for. And, truly, my lord, had not Young laboured under a strange defect of morals, he was incomparably qualified in all other respects to have been a select, singular and standing witness for the state: for as he has a sufficiency of wit, and presence of mind, to be able to give things the best gloss and readiest turn of thought, so he is furnished with a larger stock of impudence and assurance than most men in the world are: of which your lordship was an astonished witness when you had him before you at the bar, to be tried for the forgery which I have mentioned, and to be condemned to the too gentle and feeble punishment which the law hath ordained for it. For with what confidence did he stand, not only under the load of a thousand infamous actions, of which all the court knew him to have been guilty, but under the fullest and clearest proof of the malicious forgery for which he was then arraigned? Yea, with what effrontery and air of impudence, to the amazement of all there, did he continue to assert his own innocence, and persevere in his crimination of others? But that which filleth men most with sorrow, in reference to that transaction, and which keeps them under disquieting fears ever since, is, that though Young and Blackhead were instruments in it, yet people of another figure must have been the first contrivers and authors of it: and the handing money to Blackhead, while

only that the letter is written in a less hand, as letters are wont to be, and the Association in a greater, as a public instrument.

At this the whole board, one after another, had a perfect sight of both, and all applauded the happiness of the discovery: for it was as clear as light to all that were present, that the letters and words of both were of the very same form and figure.

Particularly, my lord Godolphin farther observed, and made it plain to them all, that the W. in W. Cant. in the subscription was the very

kept in custody by Allen the messenger, and conniving at his escape from thence, gives us more than a suspicion of it, and little less than a moral certainty: for that rogue having been the tool, employed too with Young, by the superior managers, and having threatened to squeak in case given up and abandoned to a public punishment, it was so ordered, that he might not only be permitted to get away, but be sheltered and maintained in Ireland, whither he withdrew, and from whence the government might have easily brought him back, were there not a mystery in that affair, which it is not for some people's honour to have unravelled. Nor was the messenger, out of whose house and custody he made his escape, ever punished for his carelessness and neglect; but after a little menacing and reprimand, which was mere grimace, he hath been treated all along since with more distinguishing favour than fell to the share of his fellow-officers. Neither durst so mean and creeping wretches as Young and Blackhead, (how impudent and malicious soever they are) have attacked persons of the earl of Marlborough, and the bishop of Rochester's rank and quality, and who had merited so well of the government, and were believed at that time to stand in all terms of fairness with, had they not been prompted, guided, and encouraged to it, by persons of authority, grandeur and eminency. And had the villains acted merely under their own conduct, and by the influence of personal malice and avarice, they would have singled out such to be accused, as are held indiscreet, talkative and rash, and with whom it might have been likely for them to have had some conversation; and not persons of the greatest prudence, circumspection and reservedness of any in the kingdom, and into whose society it was morally impossible that any should judge them to have been admitted, nor so much as into their presence, unless as beggars and indigent supplicants. So that this conspiracy, by suborning two infamous rascals, and of obtaining thereby credit to a Plot, upon the belief of which, several noble, reverend, and worthy persons, were to have been involved under guilt of ruin, may serve to instruct your lordship not to be hasty and forward in giving credit to the present importunate and noisy clamours, and to make you extremely wary how you proceed to the conviction and condemnation of those that are accused and threatened to be arraigned."

same letter with the W. in Whereas, which was the first word of the counterfeit Association.

For my part, I could not forbear exclaiming, Great is truth, and it will prevail!

After all this, I asking the lords, whether they had any farther service to command me? And they saying, No: I spoke these few words.

My lords, I must always acknowledge, that, next the signal providence of God, in so visibly protecting an innocent man, your lordships fair and honourable way of proceeding with me, in not shutting me up close in the Tower immediately upon my first accusation, but in openly confronting me with these varlets, whilst the matter was fresh in my memory; and in so strictly and impartially examining them now, has been the principal occasion, that my innocency has met with a vindication as public and unquestionable, as I myself could have wished and prayed for. But still, my good lords, I do again most humbly recommend to your lordships, the prosecution of this black contrivance to the bottom, for the sake of truth and justice, and for the safety of every other honest man, whose lot this might have been as well as mine. I am sure your lordships all believe, that there can be no greater service to the government, especially at this time, than to have such perjured informers, so plainly discovered, to be severely punished according to their demerits.

And so I took my leave of their lordships.

This is the substance of what I can remember, as far as my part goes in this surprizing adventure. As to the Account I promised of my wicked accusers, my reader shall have it as fast as my weak eyes will give me leave to write it.

Aug. 1, 1692. Bromley. THO. ROFFEN.

PART THE SECOND.

THE SECOND PART OF THE RELATION OF THE LATE WICKED CONTRIVANCE AGAINST THE LIVES OF SEVERAL PERSONS, BY FORGING AN ASSOCIATION UNDER THEIR HANDS: BEING A FARTHER ACCOUNT OF THE SAID FORGERY, AND OF THE TWO AUTHORS OF IT, STEPHEN BLACKHEAD AND ROBERT YOUNG, ALIAS YOUNGS, ALIAS BROWN, ALIAS HOPKINS, ALIAS HUTT, ALIAS GREEN, ALIAS JONES, ALIAS SMITH, ALIAS, &c. WRITTEN BY THE BISHOP OF ROCHESTER.

Quo teneam Vultus mutantem Protea Nodo?

TO THE READER.

It is well known to divers persons of worth and honour, that this second Part was finished, and has lain by me some considerable time; excepting the additions of some very few original papers lately come to my hands, which serve only to explain and confirm some passages I had written before. The cause of my

not printing it sooner, was an expectation of Robert Young's speedy trial. But that being now deferred till the next term, upon occasion of Mr. Aaron Smith's sickness, I have been prevailed with no longer to delay the publication of it.

If any shall still surmise that I might have done better to let him alone yet a little while, till the justice of the nation had passed upon him: I answer, that well-nigh all, that I say of him, relates to such of his crimes, which the justice of this, or a neighbouring nation, has already passed upon. And though I can prove, this villainous contrivance of his plot has been at least of a year and a half standing; and do know many steps of it more than are hitherto commonly known; and have seen many letters to this effect, all written by Robert Young's hand, some in his own, some forged for me, and divers other persons far more considerable; yet my reader will find, I pass all, or the greatest part of that by, and leave still enough to be produced against him at his trial.

I do indeed briefly touch upon his late endeavours to suborn one Holland, to support his perjuries by perjuring himself, but his discourse with Holland to that purpose, and the instructions he sent him to swear by, having been both averred already upon oath, in an open court of justice, before a great assembly at Hicks's-hall: I know no pretence, why I should be bound to conceal what was then, in so solemn a manner, made public.

The truth is, the chief reason that urges me, at this time, to make known to the world the certain discoveries I have made of Robert Young's most detestable villainies of all kinds, is, that I am assured, this infamous man does still persist in his causeless and wild malice against me, and other innocent persons; and attempts, at this time of day, to justify his forged Association, by the false testimonies of others like himself. Wherefore, since he will not give me over, it is high time I should begin with him: and whilst he goes on in such a barbarous manner, to strike at my life, surely none can blame me if I debase myself so much as to write his.

But if any one shall still suggest, that I have troubled myself too much, and spent too many words on so inconsiderable a rascal: I have this yet to say, that since he could think himself so considerable, as to hope to be an evidence against mine; and several others lives; I should be wanting to myself, to them, and indeed to the public, should I not prove him to be a dangerous rascal, now it is come so unexpectedly into my power to do it.

It seems also the more seasonable for me at this very time to shew him to the world; since Blackhead has made a second escape out of the messenger's hands; and since there goes about a letter (forged, one would think, by Young himself among his infinite other forgeries) wherein it is declared in Blackhead's name, but in Young's English, that Blackhead has done no wrong to no man upon earth but

Young. Whether this can possibly be true, I leave to any man upon earth, that has read my First Part to judge. And whoever shall peruse this my Second Part, I doubt not but he will be convinced, that whatever Blackhead has done, I have done Young no wrong.

In the former part, I promised to give some account and character of those wicked wretches, that brought me into the troubles there described.

I come now to make good my promise. Only I fear, let me do what I can, the account of them, which I at first designed should be very short, will be much longer, and rise to a far greater bulk than I intended: especially, in what I have to say of Robert Young. But for that, I hope, my reader will reckon it to be his fault, and only my penance: since his life has been so highly criminal, and this is so clearly attested, that I must be somewhat large, or else I cannot do him all the right he deserves, and fully satisfy the world concerning him.

I must confess, I could never have been brought to foul my fingers with so base a subject, had I not been provoked, and almost challenged to it, by this same Young's intolerable insolence, even after he found himself detected of manifest forgery. For the last time I was discharged by the lords at Whitehall, on June the 13th, whereof I have already given a full relation; whilst I was passing through the outer-room, in my way home, there being a crowd of people, I stopped, and said, I pray, gentlemen, is Mr. Young here? I would fain have another sight of the man, who has put himself upon me as my old acquaintance, and intimate friend: though I never saw him in my life, till this very day.

Divers of the company presently shewing me, where he was, sitting by himself; I said to him, Robert Young, your conscience cannot but condemn you, for having thus mortally injured me, and other innocent persons. I cannot call to mind, that ever I gave you the least provocation: I am sorry now for your own sake, that you are still so obstinate in defending your forgeries, after they have been so undeniably detected. For you know, there is one of your own confederates within, who has plainly confessed them. And this he briskly, and most audaciously, replied to me, without the least concernment, that I could observe, "Confessed: no; you shall find to your sorrow, all is not confessed yet: a parliament will come, and then you shall hear from me." I left him, praying to God to give him grace to repent; and only adding, that else he was more in danger of his own damnation, than I of his accusation in parliament.

Now therefore, because of this impudent defiance, I have taken some pains to enquire into the man, and his former course of life. And notwithstanding the time of my inquiry has been so short (for he was never personally known to me, till I saw him at Whitehall, on

the 13th of June last) nay, though the scene of his impious actions has been so large, that I have been forced to collect my intelligence, from far and near; yet I have been so fortunate in my discoveries of him, and his meet-help, that now I look upon the loathsome heap of scandalous materials, I have got together against him, I am almost ashamed to make it public.

But, perhaps, it may be no unacceptable, I am sure it will be no unseasonable service to my country, to present it with a faithful picture of one of the most graceless wretches, that ever yet entered upon the stage of evidencing; which I think is as bad as can be said of him, in so few words.

As to a discovery of the whole plot and contrivance against myself and others; I have been able to penetrate no farther yet, than to find that it was hatched and ripened in Newgate, where-ever it was first laid, or designed. Of the managers or abettors of it, there are but very few, hitherto, come to my knowledge: though no doubt, there are still more behind the curtain. And many other honest men, in all likelihood, had been accused after the same manner, had this first attempt taken effect.

For how can it be imagined, they would only have introduced the good archbishop Sancroft, and the poor bishop of Rochester, and joining us with three or four persons of honour, and a citizen or two, have then supposed us to be so mad, as to engage under our hands, to seize on the queen's person; to surprise the Tower; to raise a mighty army; and to bring the city of London into subjection.

No; without all question, if this false association had once passed for authentic, many other papers of the same nature would soon have been produced out of the same forge; to the involving of many other innocent persons, both of clergy and laity, in the like counterfeit guilt.

But, till time shall bring to light more of this detestable work of darkness, the whole ignominy of it must be shared at present among the pretended witnesses, whom I have already heard named.

Of these there was one captain Lawe, mentioned both by Young, and his wife. And they boasted much of his concurring testimony, when he should appear. Yet of him I have nothing more to say, than that I find, there really was such a man as Lawe, a prisoner too in Newgate; and freed from thence the 5th day of August, 1691: a captain, Young said he was; and he might as easily make him one, as he made himself a priest; which (I thank God for the church's sake) he was no otherwise than in fiction. How this captain got his liberty, I have yet no reason, that I know of, to examine strictly; seeing he has hitherto had either the modesty or the cunning to withdraw himself, and not to venture being an evidence in so bad a cause. For the present, therefore, I leave captain Lawe, as I found him, with no other mark of disgrace, but

what his friend Young has fixed upon him, by naming him as a man likely to deserve the title of the third discoverer of his plot.

Of Blackhead too, besides what relates to myself, which the reader has had before, I have but one story more to insert here; though that indeed is home, and to the purpose. For this very Stephen Blackhead was prisoner also in Newgate, and condemned on January 15, 1689, to stand in the pillory, and to lose his ears together with one Lewis and one Patrick, being all three convicted of one and the same forgery.

Lewis, and Patrick, it seems, were so ill befriended, as to have the rigour of the law pass upon them. By what favour Blackhead came to be reprieved and pardoned, it is not now my business over-curious to inquire: else I could perhaps tell a story, how the knave, being himself a broken taylor, and employed in the soliciting of other debts; and having, as is usual, some bills and letters of attorney intrusted with him for that purpose, had the good luck, and the honesty, by delivering up, and cancelling one of them, to save his ears, and purchase his pardon.

But, perhaps, I do not well to anticipate any part of Blackhead's other knaveries, not doubting, but he will, in time, supply abundant matter, to deserve a like history of himself: it is more than probable, that some other good and peaceably-minded man, having been as vilely trepanned by him, as I have been, though perhaps, by some other way than a flowerpot, will have the same reason to search into all his tricks, and to set them out with as much variety, in as ample a manner, as I shall now endeavour to do Robert Young's.

It is this Robert Young, that I conceive, has most merited to be my proper subject. By what appears yet, Blackhead was only the tool, and the instrument; Young was the chief, if not the first contriver of this treacherous design. Blackhead was touched with some remorse, so far as to reveal some part of the truth: Young persisted to the last, without any relenting. And, when one would have thought he should have been quite overwhelmed with what his colleague confessed, he had the face, in so honourable a presence, with a prodigious and inimitable turn of impudence, to impute Blackhead's confession to my having suborned him.

As to Robert Young, therefore, I will first give a true draught in little of his whole life: that my reader, keeping the principal passages of that in his memory, may know where to require satisfaction in any particular, from my original papers.

But now, in the very beginning of Robert Young's story, I might be at some loss, what is really his name; for, in several places, he has gone under divers names; and behaved himself so, as quickly to wear them all out, and to make it necessary for him to change them often.

Thus, on sundry occasions, he has passed under the names of Brown, Smith, Hutt,

Jones, Green, &c. In Dublin, he sometimes called himself Marsh: in Raphoe, Hopkins, to render himself more acceptable, in his ill projects; taking the true names of the worthy archbishop and bishop of those sees, at that time.

Yet, after all, I find the name of Young is most likely to pay all his scores; for, notwithstanding his many divings, under other disguises, it has so happened, that he has still risen up again at last, in his own true name of Robert Young.

There may be also as great a controversy raised, what countryman he is. In some of the original papers in my keeping, he passes for an Irishman; in some, for a Scotchman; in his own letters (which I have the least reason of all to believe, and, being myself an Englishman, I am most unwilling to believe) he gives himself out for an Englishman, born at Chester. Wherefore, till I am more familiarly acquainted with him, than he himself says I am, I must be forced to leave his country uncertain: though I am confident, there will be no great contention or emulation between the three kingdoms, to which of them he owes his birth.

In the same letters, wherein he says he was born at Chester, he affirms, that his grandfather was sir Peter Young's son, and his grandmother the duke of Lenox's daughter. Had he really been descended from sir Peter Young, I might still urge, that he is the more to blame in rendering an honest stock, as he calls it there, infamous, by making it degenerate into the most enormous crimes.

But how can I credit him in this matter of his extraction from sir Peter Young, and the illustrious house of Lenox; when, in the very same paper, there follows, immediately, that which, to my knowledge, is a horrid lie: that he was ordained priest by the bishop of Clogher. For I shall give infallible proof, that his priest's orders he only imposed on himself, by his own false hand.

But, to clear up this whole business, I have also by me a true copy of an account he gave of himself; wherein, quite forgetting this romance of his being a Cheshire man, and his kindred to the duke of Lenox, he gives this narrative of his own life.

It is dated May 26, 1683; and declares, that he was born at Warrington in Lancashire, that he went over into Ireland, and to school at Iniskillin: that he thence removed to Dublin college, being eighteen years old; where he continued seven years, and was made master of arts, eleven years since: that thence he went to be curate in Leighlin; and for three years last past, was chaplain to the bishop of Ferns and Leighlin: that he preached all the courses, for the dean and prebends, at ten shillings a sermon: that he had all the book-money; that is, the fees for marriages, burials, and christenings, there being no other parish church, but the cathedral: that he lived in the bishop's house, till his death, since

Christmas: that two years before, he married the bishop's house-keeper: that he had testimonials from the college of Dublin, and was ordained by his own bishop.

Now would not any plain honest man take this to be a simple and true narrative of the man's birth, his education, and conversation? But nothing is more certain than that every line almost of all this is full of gross falshoods. And, as ill-luck would have it, after he and his reputed wife had rambled over England for divers years, and cheated multitudes of well-disposed persons, by the help of false and lying certificates, they being at last apprehended and imprisoned at Bury, as you will hear, confessed before the magistrates, that all their testimonials and recommendations were false and forged.

Wherefore it is time for me to leave still in the dark, as I find it, that age of Mr. Young's life, which he has made either to be merely fabulous, or so mixed with truth and fable, that there is no distinguishing between them. I now apply myself to that part of it, which, from undoubted testimony, I can affirm to be historical. And I shall date the beginning of this period about the year 1680.

In that year, or near thereupon, his first famous exploit, that occurs to me worthy of himself, was his marrying a second wife, Mary Hutt, whilst his first lawful wife, Anne Yeabsly, was living; with whom he had cohabited five years, and had three children by her.

Then, to qualify himself for employment in the church of Ireland, and to maintain his family (which he had taken such a way to increase) he did really insinuate himself into deacon's orders by the hands of the bishop of Killybegs; whom he circumvented by forging the archbishop of Cashell's, the bishop of Waterford's, and other clergymen's hands, to false, but very ample testimonials of his morals and learning.

But, as for his priests orders, he was beholden to no bishop for them: he had only recourse to his own incomparable faculty of counterfeiting hands and seals; so that, if that same Dr. Hookes, you wot of, had been but an honest man, he might easily have found out the false priest, without ever troubling himself to write to me about him.

However, being after this manner ordained deacon, and having ordained himself priest, he got to be entertained as a curate, first at Tallogh in the diocese of Waterford; whence, for divers crimes, he ran away with another man's horse, which he never restored: then at Castle-Reah in the county of Roscommon, whence he was forced to flee for getting a bastard: and, lastly, at Kildallin in the diocese of Kilmore.

Nor had he been long in this last cure, but he was accused, for many heinous offences, before the bishop of that see, who, at the time of my writing this, is the most reverend archbishop of Dublin: whose just description of the man, I shall give in its due place; wherein his grace has represented him, as the most im-

pudent, lying, profligate wretch on the face of the earth.

Wherefore, to escape the justice of his diocesan, who knew him so thoroughly, he fled into the diocese of Raphoe. But, being pursued thither, and traced out by the notoriety of some of his new pranks, he was apprehended by my old friend bishop Hopkins, and first imprisoned at Lifford; then removed to the gaol of Cavan: where he was presently loaded with many of his former crimes; especially for having two wives then living; Simon Hutt, the father of the second, being then an inhabitant and innkeeper in Cavan.

Whereupon the good bishop of Kilmore, now archbishop of Dublin, fearing Robert Young might come to be hanged in his gown, degraded him from his orders; if I may call them his, since the one of them he had surreptitiously gotten, the other was really none at all.

Shortly after he was indicted, and should have been tried for his having two wives: but he had so ordered the matter, by an admirable artifice (which I shall tell by-and-bye) that the two women could never be brought together at his trial, to own him for their husband.

By this means he was discharged of a crime, whereof I shall presently give manifest proofs, besides his own confession, under his own hand; which, I hope, the reader will not think he did counterfeit too.

But, still being in Cavan gaol for fees and debts contracted there, to free himself thence he made application to the duke of Ormond, at that time lord lieutenant of that kingdom; pretending, that if he were once out of prison, and had leave to appear before his grace, he could make notable discoveries of dangerous plots against the government; in which some of the nobility, and several bishops, were concerned.

Whereupon, the popish plot having been just before in full vogue there, as well as here, the duke thought it expedient to grant him his liberty, in order to his coming up to Dublin, to make good what he had so confidently promised.

But the knave had his end, and having got out of gaol, by a pretence so plausible, he never thought of calling at Dublin, but retired secretly to Inniskillin, and let the discovery of that plot shift for itself: which, they that knew him best may think, was the honestest action of his life; to break only a promise, that he might avoid being an Irish evidence: and perhaps some of my friends may be apt to say, *Sic omnia*.

Whilst he was lurking at Inniskillin, he enticed thither his second wife Mary Hutt, who has ever since run the same fortune with him, and been the inseparable companion of all his frauds, and was the very woman that appeared against me before the lords, to justify the association. So that from that time we hear nothing more of his true wife, Anne Yeabsly. It seems he then entirely cast her off, after he had allured her by the most solemn vows of

living with her alone, and for ever renouncing the other, to be the chief instrument of his not being convicted at Cavan; and that by no less than a downright perjuring herself for his sake.

But, whatever became of her, it is certain, that it was with Mary Hutt he fled into England, in or about the year 1683. And, from that time to this, they have run a constant uninterrupted race of all kinds of wickedness in this kingdom, scarce ever passing a month, or a week, of these eleven years, without either being actually in some prison, or committing such crimes as deserved the deepest dungeons.

The first news I hear of him, after his arrival in England, was upon his making application to the venerable archbishop Sancroft, for some employment in our church. This he did in the garb, and under the character of a distressed Irish clergyman; and, to prove himself such, he exhibited his counterfeit orders from the bishop of Clogher. And I must not omit, that, as a testimony of his modesty, this his first visit at Lambeth, and the producing his orders there, was within a month after he had been degraded in Ireland.

But the wise and wary archbishop immediately suspected him and his letters of orders, they being not in form, or the usual stile, nor the seal fixed in its due place. Against all which exceptions the falsary fenced as well as he could with a shameless lie. Yet he received no other answer, but that his grace had no cure void in his gift.

But Young would not be put off so; shortly after he came again, desiring and pressing the archbishop to recommend him to be a chaplain to some ship, or to some cure in one of our western plantations. Which his grace again refused, and upon surer grounds than before: for, in the mean time, he had sent to Dr. Foley, chaplain to the archbishop of Dublin, then in England, for a better information concerning this bold and importunate man, which produced the letters hereafter set down from the lord archbishop of Dublin, and the lord bishop of Ferns and Leighlin, touching his forging of orders, his degradation, his double marriage, and other his good qualities.

Thus failing at the archbishop's, he forthwith sent his woman to Windsor, where the court then resided, with a petition to the king; therein she sets forth, that her name was Mary Green, the wife of one Robert Green, an Irish minister; who, going into the West Indies, upon urgent affairs, was taken captive by the pirates of Sallee. Therefore she prays that the king would be graciously pleased to recommend her sad condition to the clergy of England; and that his majesty would request them (so her secretary words it) to contribute their charity toward her husband's ransom.

This petition was read in council, June 18, 1684, and referred to the lord archbishop of Canterbury, and the lord bishop of London. But we may be sure the petitioner, or her husband, came no more to Lambeth for an answer to the reference. They took a shorter way,

and much easier to themselves; they forged a favourable report upon the petition, under the archbishop and bishop of London's hands and seals; by virtue of which (together with the archbishop's true hand and seal, which they had gotten by chance, and affixed a false recommendation to it) they wandered a long time over England, sometimes together, sometimes asunder, he passing for her brother, sometimes under the name of Robert Hutt, sometimes of Robert Green; and so cheated the king's subjects of very considerable sums.

But at length this plot was unluckily spoiled by their coming in their progress to play their pranks in Suffolk, the archbishop's native country, especially in Bury; where exhibiting their false recommendations to Mr. Cleggat, the minister of that town, the vagabond and his quean were seized upon suspicion; and, being severally examined, they themselves confessed before divers justices of the peace the whole train of their forgeries in this particular. Whereupon they were tried, and found guilty, and sentenced to stand in the pillory in the market of Bury, October 6, 1684; he going under the name of Robert Young, alias Hutt; she of Mary Green, alias Hutt, alias Peirson, alias Young.

Some time after this, having made a property of the name of Green, and of the captive Irish minister long enough, and squeezed out of it as much money as it would afford; and not being to be terrified from so gainful a traffic by one pillorying at Bury, they still carried it on, only changing the scene, and altering their stile: she, that before was Mary Green, is again sent out, and furnished by her friend, with a new set of forged instruments and names.

In some of her false recommendatory papers, she passed for Mrs. Mary Jones, wife of Mr. Robert Jones, rector of Ashford: in others, for Mrs. Mary Smith, wife of Mr. John Smith, supposed rector too, at the same time, of the same Ashford, in the diocese of Canterbury; whereas neither Jones, nor Smith, was ever rector there, no more than doctor Hookes is rector of Wingrave in Buckinghamshire.

However, each of these her new husbands was pretended to be a prisoner for a vast debt, upon the account of suretyship: and she carried about with her divers counterfeit letters of the hand still of archbishop Sancroft, desiring (and in one of her papers making his grace humbly to beseech) the contributions of the bishops and clergy for the poor man's enlargement.

This cheat was indeed more gainful to them than the former. The archbishop's hand was so admirably well imitated, especially in the subscriptions of his name, that she generally met with a very kind reception; and particularly applying herself to three bishops, who, of all the bench, were the archbishop's most intimate friends, even they were deceived by a legerdemain so well devised, and nothing doubting, but it was his grace's true hand (though

they knew it almost as well as their own) they and their clergy were very bountiful to her.

Nor was Robert Young himself all this while idle, but sometimes he accompanied this Mrs. Jones and Mrs. Smith, as her brother; sometimes he came after her as her receiver; sometimes he went a different road from her, as her agent deputed to solicit good people's charity to so pious a work: shewing another false letter under the hand of Dr. Faulconberge, secretary to the archbishop; wherein were set down divers sums, as given by several of the clergy, to draw in others; and, among the rest, I thank her, she owns the receipt of 4*l.* from the bishop of Rochester.

I admire how it was possible this their wicked trade was not sooner discovered; which it had been in a nation less charitable than ours. But here they successfully drove it on the better part of the year 1687, till at length the archbishop was alarmed from divers quarters, by notice that his hand and seal went a begging about the kingdom; which occasioned the advertisements, that were given to the whole nation, in the Gazettes of September and October, 1687, to beware of Mrs. Jones and Robert Smith; and to apprehend them, that they might be dealt with according to law: whereupon Mrs. Jones was very closely traced to Chester, and searched for there by the lord bishop of St. Asaph's order. But she prevented the diligence of his messenger, and escaped to London.

Not long after this, they both came to Bromley. The occasion of it was (as I have understood since) that Mr. Goodwyn, who officiated some time for Mr. Dobson, falling suddenly ill, and going to London for cure; and being at a loss for the supply of a chaplain at the college of widows, had by chance this Young offered to him, as a grave Irish clergyman, of good preferment in that church, but at present out of business, having fled that kingdom with his family, upon the beginning of the duke of Tyrconnel's rage against the Protestants.

By help of this imposture he and his wife were entertained at Bromley, though, by good hap, they made a very little stay here. Yet, as short as it was, he has left signal marks behind him of his wickedness, and particularly of his owning that he had the knack to counterfeit any man's hand in England.

However, during his small time in the college, the good widows had respected him, and his fellow traveller so kindly, that he remembered it two or three years after, when he was in Newgate. I will presently produce the very letter written thence, in which he is not ashamed to beg of an hospital, and in a canting strain, to intreat they would make a collection among them, towards his being removed to the King's-bench.

The whole letter is full of prevarications: but there is one I cannot forbear mentioning now. For though the true cause of his and his reputed wife's being clapped up in Newgate,

VOL. XII.

was their forging several bills of exchange, and receiving the money upon them, for which they both then stood convicted, and had been pilloried; yet he solemnly protests, and thanks God, that he was not a prisoner for any ill thing, but only because an Irishman ('whom I pray God forgive,' these are his very words) 'swore against me, that, by virtue of bills, I raised money for the use of king James: whereas (says he) you all remember I stood up for the Church of England, and stood in the gap against the Roman Catholics in the worst of times.'

But after a short time of sojourning here, of about six weeks, or two months, in the year 1687, Robert Young soon perceived, that the poor town of Bromley was not a proper seat for him to set up his rest in; where he could only expect a bare subsistence by reading prayers, as a substitute to one who was himself a substitute to the chaplain of the college: whereas he knew, and had practised, a far more ready way of getting a plentiful livelihood; whether honest or dishonest he mattered not.

Wherefore, removing hence to Wapping, and thence to Whitechapel, he began to look out for some fitter place for a new scene of action; where he might more profitably exercise his best-beloved faculty of counterfeiting hands and seals.

At length he cast his eye on St. Alban's, a town, which, by reason of its great trade, and convenient distance from London, and, being so great a thoroughfare, he pitched on to practise in it some of the cleanliest feats, I must say, of his knavish dexterity in that kind.

Between St. Alban's and London, he began to ply in the beginning of the year 1688, and it was not long before he crept into a great familiarity in the post-house there. By what arts of courtship he became so intimate on a sudden in the family, I leave it to the ensuing papers to inform my reader.

However, by this means, he procured the absolute command of all the mails of that road; and so had the opportunity of opening and perusing, and taking out, and putting in, what letters he pleased, between the chief traders of those parts, and their correspondents in London.

Having thus furnished himself with proper tools, and chosen as fit a shop to work in, as any in England, he presently fell to his usual way of commerce; whereof I shall only mention three or four instances; they being the very same for which he and his supposed wife were afterwards condemned of forgery at the Old Bailey.

His first cheat was thus: in July 1688, he went to Northampton, and, under the name of Robert Smith, paid to Mr. John Clarke, an inhabitant there, the sum of 20*l.* and took his bill of exchange for it, to one Mr. Jonathan Kendall of London: Mr. Clarke also sending a letter of advice, that he had drawn such a bill upon him for the use of Mr. Robert Smith.

Robert Young, whom we must now call

Robert Smith, forged another bill *verbatim* by the true one, for the same sum of 20*l.* payable to himself under the same false name; and, straight coming up to London, delivered the forged bill to Mr. Kendall; which being so very exactly done, Mr. Kendall made no delay of paying it, and had Robert Smith's receipt, dated July 16.

As soon as this was over, honest Robert immediately took horse, and hasted down to Northampton; where, arriving on July 17th, he forthwith went to Mr. Clarke, and told him, that he had offered his bill at London, but Mr. Kendall refused to pay it, and therefore desired his money again, producing the true bill; which Mr. Clarke receiving, and seeing no imaginable cause of distrust, paid the 20*l.* without demur.

Thus far Mr. Clarke and Mr. Kendall only sustained the loss of 20*l.* and, perhaps, somewhat smiled at the clever contrivance. But that which next follows, was more extraordinary, and struck deeper into their purses.

And how can my reader now think it probable, that both Mr. Clarke and Kendall should be again cheated by the same hand, of a much greater sum, within less than three months after? Yet so it really happened; and, in such a manner, that it was almost impossible for the wit of man to prevent it.

His second St. Alban's cheat, therefore, was this: being now become perfect in the exact character of Mr. Clarke's writing, he forged a bill, dated Oct. 5, 1688, as drawn by Mr. Clarke on Mr. Kendall, for 150*l.* payable at sight to his own Mary Young, under the name of Mrs. Mary Clarke.

And, because there was a necessity that a letter of advice should go before the bill, he counterfeited one also in this manner: in the Northampton bag, which he opened at St. Alban's, he found a long letter written to Mr. Kendall by Mr. Clarke, touching divers particular affairs then transacting between them. This letter he intercepted, transcribed it throughout, and, about the middle of his false copy, inserted these words, That he had drawn on Mr. Kendall a bill of 150*l.* to be paid upon sight to Mrs. Mary Clarke; and so went on with the other business, as in the true letter. This forged letter he put into the Northampton mail; so it went safe to Mr. Kendall at London.

The next morning after, Mrs. Mary Clarke came to him with her bill. Whereupon Mr. Kendall, not in the least suspecting that the bill or letter of advice were forged, because he was confident, they were both of Mr. Clarke's own hand-writing, and the letter giving him an account of several other businesses, which he thought could not possibly be known to any, but to Mr. Clarke, and himself, he presently paid to Mary Clarke the 150*l.* and so lost the whole sum beyond recovery.

His third cheat on the same road was in this manner: about the latter end of February, in the same year, 1688, he sent his second false-

self now again under the name of Mary Young, to Mr. Jonathan Mathew of Daventry in Northamptonshire. She paid him 9*l.*; for which he gave her a bill of exchange upon Mr. Richard Shipton of London, payable to the said Mary Young, which she received March the 14th.

By this true original of Mr. Mathew's own hand, on the 18th of March following, he forged another bill in the name of the said Mr. Mathew, for 200*l.* charged also on the said Mr. Shipton. And, having still the liberty to search the Daventry mail at St. Alban's, and finding there a letter from Mr. Mathew to Mr. Shipton, he made the same use of it as he had done that of Mr. Clarke's to Mr. Kendall; transcribed it intirely, and, in the same surreptitious manner as before, put in an advice of his having drawn a bill of 200*l.* and for whom. Which letter was immediately sent by the post to Mr. Shipton.

The false bill and letter of advice, I am assured, was so accurately counterfeited, that Mr. Mathew himself could not discover the difference nor disown it upon view; but only in that he was certain he had never drawn any bill of that importance.

Mr. Shipton therefore was easily deceived by the similitude of hands; and Robert Young having sent Mary to London, to receive the money, he paid it without the least scruple; since this letter of advice also mentioned other things which Mr. Shipton knew to be true.

Mr. Mathew, as soon as Mr. Shipton sent him word, that he had paid in his name a sum so considerable, dispatched immediately a servant up to London, to let him know, he had never drawn any such bill upon him, and had given him this timely notice, that, if possible, he might retrieve the money.

Thenceforth, they both used all imaginable endeavours to discover the authors of the fraud. Which Mary Young perceiving, by their frequent letters to each other, Robert having still the advantage of opening at St. Alban's; she wrote Mr. Mathew a most insulting letter; telling him, that she had made bold to borrow of Mr. Shipton 200*l.* upon his credit, but would repay it, when she was able. And, to amuse him the more in his search, she addeth a flam story, that she had got his hand-by corrupting one of the letter-carriers in London; and that, therefore, he need not trouble himself to enquire any farther about the matter: subscribing herself, Mary Young, alias Brown, alias Stewart, alias Forbus, alias Boner, &c. of which pretty piece of impudent raillery, my reader shall have the true copy, when it comes in its course.

His last forgeries practised at St. Alban's, that have come within my observation, were upon Mr. Olds of Coventry, and Mr. Billers of London.

But, before I proceed to these, I must acquaint my reader, that Robert Young had owed Mr. Olds and Mr. Billers an ancient grudge, of as long standing as the year 1683;

because then he could only defraud them of 10*l.* and a ring, and not of 100*l.* as he designed. The case was thus :

Robert Young, in June 1683, forged a bill in the name of Mr. Joseph Olds of Coventry, for 100*l.* upon Mr. John Billers of London, payable at sight.

He likewise forged a letter of advice of the said bill, which he procured to be put into some post upon the road. And accordingly it was delivered in London to Mr. Billers on June the 12th.

The next day, being June the 13th, Robert Young, in a canonical habit with a scarf on, presented to Mr. Billers the forged bill for 100*l.* ; the counterfeit was exact, and Mr. Billers had received a letter of advice before ; whereupon he straight ordered his cash-keeper to pay the reverend Mr. Young his bill.

Robert, seeing the money come so freely, would have taken it upon content ; the servant would not pay it, except he would tell it over ; which at length he did.

But, before he could carry it away, the servant whispering this to his master, and Mr. Billers himself observing something in the bill, that gave him reason to suspect it, came to them, and said to Robert, that he desired to be better satisfied in the said bill, and that he was the person, whose right it was to receive it, since he knew him not.

Robert replied, he was a country minister, altogether a stranger in town, and known to none but the archbishop of Canterbury, ' Well, said Mr. Billers, ' when you bring me any of ' the archbishop's gentlemen to give me an account of his grace's knowledge of you, you ' shall presently have the money.'

But Robert pretended very urgent occasions for it, and that he was to pay away some of it that night : and therefore earnestly intreated he might have the whole, or at least ten pounds of it for the present. Mr. Billers consented to this last request : Mr. Young gave a receipt for the 10*l.* : and, to prevent a farther trouble of telling the money again, Mr. Billers desired him to seal the rest up in the bag where it was put. Mr. Young had no seal. Mr. Billers pulled off his finger a gold ring set with a cornelian stone ; bid Mr. Young seal the bag with it ; gave the ring into his keeping, and appointed him to bring it again the next day, when he came for the residue of the money. Mr. Young very fairly went away with the 10*l.* and the ring, but never came again for the remainder of his bill, or to bring witness, that he was acquainted with the arch-bishop.

Having now set forth this matter of fact of Mr. Billers keeping back 90*l.* from Mr. Robert Young, even just when he was in the very act of receiving it, I leave it to my reader to judge, whether Robert did not owe him a good turn. My next business is to show how he paid it him : some years, indeed, had passed, before he took his revenge ; which I somewhat wonder at ; but he took it at last to some purpose.

The manner how it was done I shall express as briefly as I can, because the circumstances of this were very near the same with his other aforementioned St. Alban's forgeries. About the middle of February, 1688, he sent his faithful instrument Mary, under the name now of Mrs. Sarah Harris, to pay the same Mr. Olds 10*l.* at Coventry, for which he gave her a bill of exchange upon the same Mr. Billers, payable at sight : so, for very good cause, Robert took care all, or most of his bills should be worded. By this means Robert renewed his acquaintance with Mr. Olds's hand, and soon perfected himself in it, by watching over all his letters of correspondence with Mr. Billers, which must come from Coventry through St. Alban's, where he governed those that governed the post house.

Being thus prepared, he began at first to play at small game, that he might keep his hand in use : for, finding in one of Mr. Old's letters two bills, the one of fourteen pounds ten shillings, the other of 20*l.* both payable to Mr. Billers, he took possession of the letter, forged indorsements on the bills, in the name of Mr. Billers, that they should be paid to his servant, James Moreton (whose true name was James Young, and he was really Robert's servant) and accordingly both these bills were paid, Aug. 5, 1689, to James Moreton, alias Young ; as, it seems, nothing can belong to Robert Young, without being intitled to an alias.

This James Moreton, alias Young, I say, did actually receive both the bills ; and, thinking it was but reasonable he should have a share in the profit, as he had in the knavery, paid the sum of the one bill to his master, and kept the other to himself : the first cheat (and the last, I believe) that was ever put upon Mr. Robert Young.

But, after these less gainful experiments, it seems, Robert Young thought it now a fit season, that his main plot upon Mr. Olds and Mr. Billers should begin to work ; for, by his long familiarity with the northern mails, he had learned, that, at this time, there was a considerable cash of Mr. Olds's remaining in the hands of Mr. Billers.

Wherefore, by the same method which he had used in his other cheats of this kind, he forged a bill of two hundred pounds to be paid at sight to the same Mrs. Sarah Harris, proceeding in the same steps as before ; that is, he intercepted one of Mr. Olds's letters, transcribed it, adding an advice of having drawn the said bill of 200*l.* for Mrs. Sarah Harris ; then suppressed the true letter, and put the false one into the post ; which was delivered to Mr. Billers, at London, upon August the 11th, 1689.

The next morning came Mrs. Sarah Harris to Mr. Billers, and produced her forged bill : he could discover no deceit in the hand, owned he had received the letter of advice, and was just giving order for the payment ; when, by good fortune, he recollected, that he had heard

Mr. Shipton of Friday street had, not long before, been defrauded after the same manner, by a woman coming, as this did, in the morning, and of the same sum of 200*l*.

The fresh remembrance of this gave him just grounds of being jealous of the like trick; so that while the money was telling out, he thought it would not be amiss to send and desire Mr. Shipton to come and take a view of this Mrs. Harris, intimating the reason why he sent for him. Mr. Shipton came accordingly, and, upon the first sight, declared her to be the same Mary Young, that had lately cheated him of his 200*l*. She, being thus unexpectedly charged with this crime, confessed it upon the place; whereupon she was apprehended, and committed to the King's-bench, after she had received above 500*l*. in a short space, by the like ways, whilst she was such a kind of agent at London for Robert Young, as my reader will find she owned upon oath afterwards at Litchfield.

But in the King's-bench I must leave her for a short time, that I may look out after her dear friend, and inquire how he behaved himself, in this sad catastrophe of their affairs, after they had so long proceeded smoothly and prosperously.

It was high time for him now to intermit his correspondencies at St. Alban's, and to remove to a greater distance from London; so that the next footsteps, I have traced of his rogueries, were at Litchfield; whither, I find also, he had made some excursions in the year 1688, but now, in the year 1689, it seems he went thither, resolving to settle there for some time.

There he appeared in a genteel habit, with his man, James Young, alias Moreton, to wait upon him: there he personated again an Irish clergyman, of considerable preferments in that church, and a plentiful temporal estate. He kept two horses, rode often abroad in an equipage, rather fitting a highwayman, than a divine. He had plenty of gold and silver, and some plate; the product, no doubt, of his late cheats upon Mr. Clarke, Mr. Matthew, and Mr. Olds, besides some remains, probably, of what was collected for Mr. Green, Mr. Jones, and Mr. Smith, whilst they, good men, perhaps, lay in prison for it, all the while.

During his abode at Litchfield, he professed himself to be a single man, and, upon that pretence, made love to divers women, in the way of marriage; believing, that his former Mary was lodged so safely in the King's-bench, that she could never get out to disturb his designs. But there he was deceived; for, when the fire broke out in Southwark, she made her escape, and so had leisure to look out after him, and came time enough to prevent his intended marriage.

For just then he was in close pursuit of a young woman at Tamworth, who had at least 1,000*l*. to her portion, and he was in a great probability of obtaining her. But Mary, having got loose by the above-mentioned ac-

cident, wrote him divers letters, that all her money was spent; and that she would be with him shortly, though she begged by the way. Which, at last, she made good, and arrived there, some few days before his new designed wedding, and challenged him for her husband. Or else, undoubtedly, he had served Mary Hutt the same trick, for the sake of 1,000*l*. as my reader will find he really served Anne Yeabsley, for 150*l*.

But this had like to have cost Mary her life: for Robert, being enraged at the disappointment, practised with his man, to meet her in her coming down; and either to cut her throat, or drown her. And, when he refused (which was a wonderful honesty in any one, that could submit to be his man) Robert's next attempt was to dispatch and kill his man, as he went abroad, one day, with him a shooting.

My reader, no doubt, will be amazed at this horrible story, yet I say no more than what his man himself declared upon oath, at Litchfield, and what all the country thereabout believes to be true.

But, the gun not going off, his man fled from him, first to Litchfield, and thence to Coventry; where he acquainted Mr. Olds, a mercer there, whom I have already so often mentioned, with the several cheats, that his master Robert Young had formerly acted upon him by forging bills of exchange.

Mr. Olds, having never before, by all his search, been able to discover the contrivers of those forgeries, without delay, repaired to Litchfield, and lighted upon Robert Young, whilst he was yet flush of money and plate; which he pretended to have brought out of Ireland, where he affirmed he was a dean.

Mr. Robert, being thus unawares charged with all these cheats, freely confessed them all to Mr. Olds: and, that he might not lose his new gotten reputation in the church there, and all his hopes at once, privately made up the business, and repaid to Mr. Olds all he could demand: that is to say, the 14*l*. 10*s*.; the 20*l*. and the 10*l*. and the value of the gold ring, which unlucky blow to his fortune made him, for the future, be content to be served without plate.

But this was also the occasion of a worse mischief, that shortly after befel Robert Young and Mary; I say Mary also. For, before this, she arrived safe at Litchfield; and though, at first, he positively denied her to be his wife, and forswore her too, according to his custom; yet, in a short time, I know not how, they were pieced together again, as seeming indeed to be born for one another's society.

I have already told my reader, that Mr. Matthew of Daventry had used all possible industry, and written a vast number of letters, and made many fruitless journies, in quest of the author of his 200*l*. forgery. But all in vain, till now the noise of it, spreading all over the country, came, at length, to Mr. Olds, at Coventry. He presently gave intimation by letter to Mr. Matthew, how he himself had

likewise been cheated of divers less sums, and recovered them again, by composition: and that his knave was still in a flourishing condition at Litchfield; and he might probably be the same man.

Mr. Matthew, upon this intelligence, quickly posted down to Litchfield: beset the house, over night, where Robert and Mary lodged: the next morning Mary was soon taken, and Robert also, after above an hour's search, was pulled out from under a heap of furze, in a corner of the cellar. They both immediately confessed the fact; and Robert would fain have stopped Mr. Matthew's mouth, as he had done Mr. Old's, with the small reliicks of his ill-gotten wealth. But, that not sufficing for a sum so considerable, Robert stoutly denied all again, and defied him to do his worst: whereupon they were both clapped up in Litchfield gaol.

During this time, news was come to the secretaries office at Whitehall, of the aforesaid violations on the post-office, at St. Alban's; and that the persons offending were in custody at Litchfield. Whereupon, the right honourable the earl of Shrewsbury, then principal secretary of state, granted a warrant to Mr. Legatt, the king's messenger, to bring them up to town, as being accused for dangerous practices against the government; the persons, abused by the former forgeries, giving their consent, that they should be so removed.

Mr. Legatt brought them up, and laid them first in the Gate-house in Westminster; whence, by a warrant of the lord chief justice, they were removed into London, and lodged safely (one would have thought) in Newgate.

To Newgate they had directly steered their courses the greatest part of their lives; and thus, at last, wrought their way thither, 'per varios casus, per tot discrimina.' There they were tried and condemned for these forgeries, and underwent again the punishment of the pillory; he being fined, for one fault, 100 marks; for the other, 100 marks; and she 20 marks.

If my reader shall ask, why Robert was found guilty of no more than two of these cheats? It was, because there was no other proof against him for the rest, but the confession of Mary, who plainly confessed him to be the author of all. But that, it seems, in law, is not evidence sufficient, because they supposed her to be his wife; it was a pity the judges and jury had not known how little she was his lawful wife.

However, in Newgate they continued above two years, for want of payment of these fines, till the 25th of May last, when his fines were paid: I suppose his wife's fine was discharged too. For they both came forth in triumph, and new cloaths on, that day, with the association in their hands; after they had prevailed with Blackhead to steal it in, and steal it out of my chimney.

Thus, according to the fashion, I have given a true portrait of these precious evidences of a

new plot. My next business will be to exemplify all this more largely, by authentic proofs: which, if I mistake not, I shall do so unquestionably, that none shall be able to disbelieve what I say against Young, but such as can believe what Young has said against me.

But first I will dispatch Blackhead: touching whom, I will only give a copy of the record of the sessions at the Old Bailey, where he was condemned for forgery.

'London ss. Deliberat' gaol' dominor' regis
'et regin' de Newgate tent' pro civitat'
'London, apud Justice-hall in le Old Baily
'London, die Jovis (scil.) 15 die Januarii,
'anno regni Will' et Mar' nunc regis et
'regin' Angl' prim' &c.'

'Felix Don Lewis, Thomas Patrick, Steph.
'Blackhead, convict' pro fabricand' et publi-
'cand' falsum script' obligator' in nomine cu-
'jurd' Thom' Faulkener pro summ' 60*l.* po-
'nantur et quilibet eor' ponator supra pillor'
'uno die in Cornhil prope Excamb' London ab
'hora undecima ante merid' usq; ad hor'
'prim' post merid' ejus diei; et quilibet eor'
'habeant un' aur' ibid' absciss' et quod quilibet
'eor' habeat et sustineat imprisonment' in
'gaol' de Newgate per spatium unius anni in-
'tegri sine bal' vel manucaptur' juxta form'
'statut' ejusd'.

By this it appears, Blackhead and his two companions were convicted of cheating one Mr. Faulkener of 60*l.* by a false bill or bond; and were condemned to stand in the pillory in Cornhill near the Exchange, for two hours; to lose each of them an ear; and to continue prisoners, for twelve months, without bail or mainprize, in Newgate: where, no doubt, that intimacy between Blackhead and Young was contracted, which had been so fatal to me, had not God marvellously defeated their conspiracy against me.

Having thus, for the present, rid my hands of Blackhead, I proceed next to Young. And, the first scene of his villainies, that have come to my knowledge, having been in Ireland, I will now give certain demonstration of the particulars, out of the original papers themselves: which seem to me to describe the caitiff so plainly, that I need only set them down in their order, without any comment of mine upon them.

The principal crimes I have already objected against him in Ireland, were his marrying a second wife, whilst his first was alive: his counterfeiting certificates for deacons orders; his entirely forging of his priests orders; and his feigning the knowledge of a dangerous plot, in that kingdom; wherein he would make out, that divers great persons were engaged.

There are, also, several others of his rogue-ries, such as his having a bastard by a kitchen wench, at Castlereagh, whilst he was, a short time, curate there: his lewd life, and cheating divers people of money by counterfeit bills, at Tallogh, where he was also sometimes curate, his running away with another man's horse:

when he was forced to flee from thence, for his other pranks, and the like. All these, and more such, will come in, as by the bye; and it will be enough for me only to give my reader this notice, to mark them in the papers I am going to produce: the method of which shall be this:

1. He shall have Robert Young's general character, in a letter from the present lord archbishop of Dublin; and another from the lord bishop of Ferns and Leighlin; both written so long ago as the year 1683: whilst he was only under suspicion at Lambeth; and before he had entered upon so many vile practices in England. In these letters, he is, even then, described to be as wicked a liar, as the little carmelite friar Moor, and to be as very a rogue as the Spanish wits have fancied their Gusman. Who the carmelite friar was, I know not; Gusman is sufficiently known. But, in the sequel, it will appear, that our rogue has far outdone the very Spanish romance of theirs.

2. He shall have the lord bishop of Raphoe Hopkins's letter to the lord bishop of Kilmore, when R. Young was apprehended in that diocese under the name of Robert Hopkins; for which name also he shewed his forged letters of priests orders, upon his examination by the said bishop, which shall also follow.

3. Here are the copies of the original certificates confirming the truth of both his marriages.

4. Here are divers letters of Robert Young's own hand, when he was imprisoned at Cavan, and in danger of his life for having two wives.

(1.) A letter to one justice Waldrum, to offer him a bribe, if he would take bail for him.

(2.) Another letter to the lord bishop of Kilmore, confessing some of his knaveries, but solemnly denying his having married two wives.

Next, here is a letter to Roger Yeabsly, brother to his first wife Ann Yeabsly, alias Apsly.

Then another to George Yeabsly, her father; then two letters to herself.

In all these he confesses his two marriages: however, proposes, to her and her brother, a way to save his life by forswearing themselves: that they should get a certificate at Cork, signed by a public notary, that Ann Yeabsly was really married to one Robert Young, and that Roger her brother was present at the marriage, and that then they should both come to Cavan, and, upon his trial, deny that he was the man; and, if they did him this service, he promised, with horrible imprecations upon himself, that he would only stay to receive Mary Hutt his second wife's portion, and then run away with Ann Yeabsly, his first wife, into England.

Lastly, To complete all, I will produce two of his letters to his second wife Mary Hutt; the one after he had fled out of the diocese of Kil-

more; the other after he had got to Iniskillin out of Cavan gaol.

The first is full of the like blasphemous curses and execrations upon himself, if ever he was married to any other woman but her; therefore inviting her to come and relieve him, with dreadful promises and vows of never forsaking her.

In the second, to say nothing of his impudent reviling of the lord bishop of Kilmore, he desires her to steal away from her friends to him, and to bring the bond with her (a true one, without doubt) to bring also all the money she could get, and to be sure to pay nobody: which was accordingly done, and so with her he fled, and took sanctuary in England.

A LETTER from Dr. Foley, containing part of a Letter from the present Lord Archbishop of Dublin, concerning Robert Young; written in the year 1683, to the Lord Archbishop of Canterbury.

Tunbridge, June 17, 1683.

May it please your Grace;

Last night I received a letter from my lord archbishop of Dublin, concerning Mr. Young; part of it runs thus: 'If he be Robert Young whom I degraded, he is the veriest villain alive: he has now, or had when I knew him, several wives living. A notorious cheat, has counterfeited several hands and seals, by which he has deceived men of money, and stolen into credit and holy orders. He has been in several gaols, as namely Lifford, where he was laid up by the bishop of Raphoe, now Derry, who is going now for London; and if you can procure him to see him, I am confident he remembers him well enough. He was long in Cavan gaol, and to be tried for his life; where I got, and have by me, very many of his papers, which would enable any man to write the Scotchman's life, which I think would transcend the Spanish rogue. For fear he should hang in his gown, by the advice of the lord primate, I degraded him for the least of his villainies; because the canon was express, and he guilty, as was proved, of marrying without license. In brief, he is a notorious wicked man, and so well furnished with the necessary instruments of it, that I think friar Moor, the late convert, cannot exceed him in lying. He is a black swarthy man, of a suspicious countenance. He has several names. He assumed mine at some places; Hopkins's at Raphoe; and was here lately by the name of Brown; but, hearing that I was here, I suppose, made off again. The last wife he married was one Simon Hutt's daughter of Cavan. I send you the inclosed, which I pray reserve for me. It is a letter he wrote to his second wife, after he fled from me. Keep the letter for me; I send it, because I am mightily of opinion he is the man. Here is another letter to his former wife Ann Yeabsly, at the same time; by which you will be satisfied that Robert Young

' is a very ingenious person, and a man of deep contrivance. Had he been in time and place, he would have made an excellent evidence; and, had that trade gone on, I had doubtless been in a plot; for he declared he had a plot to discover, in which some noblemen and several bishops were concerned. I am confident I had been one; and the bishop of Waterford (whose hand and seal he counterfeited to me, and the bishop of Elphin) another; from whom he pretended orders, and the bishop disowned upon my letter to him.—Dublin. June 2, 1683.—Thus far the Archbishop.

I send inclosed to your grace the two letters, which my lord sent me, and beg your grace will please to keep them by you, till I can wait on you for them; because he desires to have them again. I am bold to say, that your grace will hereafter be a little suspicious of clergymen who come out of Ireland, without better testimonials; and that it will be for the honour of our clergy and university, that wicked and ignorant men, who pretend to be of them, and are not, be animadverted on by your grace, with some severity. I beg your grace's blessing, and am your grace's, &c. S. FOLEY.

A LETTER from the Lord Bishop of Ferns and Leighlin, now Archbishop of Cashel, to Dr. Foley, concerning the same Robert Young; written in the year 1683.

Sir; *Dublin, June 2.*

According to your desire, I waited on my lord archbishop of Dublin, to enquire of his grace concerning one Young, whom he degraded for several notorious crimes; as having two wives, counterfeiting the archbishop of Cashel's hand to the bishop of Killaloe, for his being made deacon; which the bishop (not discovering the cheat) did; and then his counterfeiting the bishop of Clogher's hand for the order of priesthood, which he never had: he went likewise under several names, and was in several gaols, particularly in that at Cavan for a great while. The man, my lord says, is about his grace's own stature, that is, somewhat tall; neither lean nor corpulent; of a pretty long, black, ill visage; his hair, if his own, is black, thin, pretty long, and hangs flag without any curls. He is a Scotchman, about twenty-seven or twenty-eight years of age; and will lie as fast as the little carmelite friar Moor (to use his grace's own expression). And this is all I can say of him. I am yours, &c.

NARCISSUS FERNS and LEIGHLIN.

A LETTER to the Lord Bishop of Kilmore, from Bishop Hopkins, then Lord Bishop of Raphoe; written in the year 1680, concerning Robert Young's Apprehension in his Diocese, under the name of R. Hopkins.

Raphoe, Nov. 11, 80.

My Lord; Your lordship's to me came very seasonably, that is, one day before Mr. Young:

and he came very confidently, expecting much kindness for name's sake; for he thought it fit to assume mine; and, at his first accost, thrust into my hands letters dimissory, lewdly forged, as from the bishop of Killaloe; with the seal to them vilely cut, and the date of 'octo die Octobris.' This alone would have given me suspicion of an imposture; but, being forewarned by your lordship, I was certain I had the man, though he lurked under another name. The contents of the letters were the amplest form of commendation, which I keep by me, but shall remit when your lordship requires it. I put many cross interrogatories to him, till, at last, one lie so contradicted another, that the man was perfectly confounded, and began to speak truth. There were two other justices then with me: we took his examination, a copy of which I have sent here inclosed. When I pressed him upon the point of polygamy, he utterly denied it, as indeed it concerned him; as also that he ever was at Londonderry, much more that ever he was school-master there; and this some who were present believed to be truth. Besides, some affirm, that to their knowledge, Sarah Mallon, who was afterwards married to one Young, was, upon his decease, married to one Mr. Laughtin, a minister in the diocese of Londonderry, with whom she now lives. I know not whether he can be so well vindicated from others, for your lordship speaks of two or three more. However, his misdemeanours and forgeries were so many, that we committed him to the county gaol, where, I hope, he will not long continue. For, as at your lordship's desire I have secured him, so I must desire that your lordship would speedily take order to have him sent where the fullest evidence may be given against him. I am your lordship's, &c. EZECHIEL RAPHOE.

The EXAMINATION and CONFESSION of R. Young, before the Lord Bishop of Raphoe, and others, in the year 1680.

County Donegal.

The voluntary examination of R. Young, late of the parish of Kildallin, in the diocese of Kilmore, and county of Cavan, clerk, taken at Raphoe, November 10, 1680, before the right reverend father in God, Ezechiel lord bishop of Raphoe, Richard Inett, clerk, and Matthew Cocken, esq.; justices of the peace of the said county of Donegal.

Who being voluntarily examined, upon suspicion of being guilty of several forgeries and misdemeanors, saith, that he was curate at the said parish of Kildallin for three quarters of a year; that he came thence in October last; that he had not any certificate or dismiss from the bishop of that diocese; that he confessed the counterfeiting of letters dimissory from the lord bishop of Killaloe, and the seal and subscription thereof are false; as also the name of R. Hopkins in those letters dimissory mentioned, he intended to have taken on him; but that his own name is Robert Young; that he

was about three years since ordained deacon by the bishop of Killaloe. That he is a married man; and that his wife's name is Hutt, daughter to Simon Hutt, and is now with her father in the town of Cavan; that he was never married before: and saith, that he is not guilty of counterfeiting any letters of orders; but confessed, that he did counterfeit and forge a letter from one Dr. Smith of Limerick, to the bishop of Killaloe, upon which letter, he ordained the said exanimate deacon, as aforesaid, and further saith not. ROBERT YOUNG.

Capt. coram nobis, Ezechiel Ropotensi, Rich. Inett, Mat. Cocken.

COPIES of the original CERTIFICATES and PAPERS, confirming the truth of both Robert Young's Marriages, and both his Wives being alive at the same time.

The CERTIFICATE upon Oath of George Yeabsly, or Apsly, his first Wife's Father, concerning R. Young's first Marriage, with three other Certificates of his Cheats.

Jan. 17, 1680.

Memorandum; The day and year above written, George Apsly, of the Breedas, in the parish of Arda, in the county of Cork, yeoman, came before me, Richard Pine, one of his majesty's justices of the peace for the said county, and made oath, that on, or about the 18th of May last was five years past, he, this deponent, was present, and gave his daughter, Ann Apsly, in marriage with one Mr. Robert Young, clerk, at Ralph-cormack in the county aforesaid; and that he saw them lawfully joined in matrimony (Dr. Smith, minister), and lived together several years afterwards. He afterwards, that is to say, about two years last past, was curate under Mr. Francis Beecher, in the parish of Tallogh, in the county of Waterford; and that his daughter Ann had three children born and begot by him, and that she, his daughter, is now living. GEORGE APSLY.

Jurat coram me R. Pine, 17 die Jan. 1680. —Thom. Neesham, Not. Pub. præsente.

Jan. 17, 1680.

I, Richard Burt of Tallogh, in the county of Waterford, esq.; do certify, that (upon perusal of the within contents) the within named Robert Young was entertained and licensed as a curate in the parish abovesaid, and afterwards deposed for reasons unknown to me; but did soon after, viz. about Christmas 1679, feign and counterfeit my name and hand-writing to an acquaintance and kinsman of mine at Fealher, for seven pounds (Mr. Cook by name) and did, by virtue of his other counterfeit letter in my name, receive (as I am assuredly told) the sum of three pounds of one Henry Russel of Clonmell. The truth of all which I certify under my hand and seal, the day and year above written. RICHARD BURT, V. C.

Jan. 17, 1680.

I, Thomas Elms of Tallogh, in the county of Waterford, feltmonger, do certify, that the

aforenamed R. Young, on, or about the 1st of December, 1679, did hire an horse, with bridle and saddle, to ride to Cashel, of me, at the rate of twelve pence per day; all which he hath deceived me of to my great damage. And I certify under my hand the day and year abovesaid. THOMAS (his + mark) ELMS.

Being present, Richard Burt, V. C. Francis Foulke, Thom. Neesham, Not. Pub., Garret Roche, Roger Power.

The COUNTERFEIT BILL of Mr. Burt.

Tallogh, 17 Dec. 1679.

Sir; The bearer hereof, Mr. Robert Young, minister of our town, is bound for Cashel to the archbishop, to pay some money. Therefore I intreat you to do me that great kindness, as to let him have three pounds, and I will pay you, when you call for it. If you do me this courtesy, I will requite you for it: so hoping you will not fail, I rest your loving friend,

To Mr. Henry Russel, Goldsmith, at Clonmell. R. BURT.

December 18, 79.

Received of Henry Russel the sum of three pound: I say, received by me,

R. YOUNG, Clerk.

The CERTIFICATE of divers other Persons, touching Robert Young's first Marriage.

We, whose names are subscribed, do hereby certify all whom it may concern, that Robert Young, who lately supplied the cure at Tallogh, was, as we are credibly informed, married at Rath-cormack, by Dr. William Smith, to Ann, the daughter of George Yeabsly, about five years since; during which time, the said Robert Young and Ann did cohabit, or dwell together as man and wife, at the house of the said George Yeabsly; where they had three children; which said George Yeabsly and Ann his daughter, do now dwell at Monoth, within four miles of this town of Tallogh. All which we do certify this 21st day of January, 1680.—Thomas Beecher, Prebend. de Clashmore; Richard Gist; John Yeabsly; William Gist; William Page; Thomas Clark; Richard Burt, V. C.; Richard Giles; George Oburn; Robert Benger; Francis Cooper; Thomas Bateman.

The CERTIFICATE of the Dean of Kilmore, concerning Robert Young's second Marriage with Mary Hutt.

I, Edward Dixy, Dean of Kilmore, do hereby own and acknowledge, that I married Robert Young, formerly clerk and curate of Kildallin, in the diocese of Kilmore, and Mary Hutt, daughter of Simeon Hutt, of the town of Cavan, vintner, on the 1st day of July last, in the presence of the under-named persons, and others, who, with myself, do hereby certify the same, and subscribe hereunto this 5th of March, A. D. 1680.—Edw. Dixy, Decan. Kilmore; Hen. Gillorist, Not. Pub.; Simeon Hutt; Lettis Hart, sen.; Lettis Hart, jun.;

Ann Hollend ; Alexander Makeland ; Thomas Lavender.

At the request of Mary Young, alias Hutt, we do hereby certify, that Robert Young, in the abovesaid certificate mentioned, lieth in the gaol of Cavan, and standeth charged with being the husband of two wives, viz. Mary Hutt, now resident in the corporation of Cavan, and one Ann Absly, in the county of Cork, unknown to us. And we do hereby desire some of his majesty's justices of the peace for the said county of Cork, that they will be pleased to bind over the said Ann Absly, her father, and some other persons, who were present at the inter-marriage of the said Ann to the said Robert Young ; that they may appear the 30th instant, to give their evidence against the said Robert Young.—Dated at Cavan, the 5th of March, 1680.—Humphry Perriot, vice com., Richard Lewis, Samuel Townly, John Maxwell, Henry Waldram, sov. of Cavan, Mer. Hart.

An ORDER of the Justices to summon George Yeabsly, his son Roger, and Ann Young his daughter, to appear at the Assizes at Cavan, at the Trial of Robert Young.

By his Majesty's Lords Justices of the Assize for the province of Munster.

Whereas George Absly of Breedas, in the parish of Arda, in the county of Cork, yeoman ; Roger Absly of the same, in the said county, yeoman, son to the said George Absly, and Ann Young, are material evidences in his majesty's behalf, against Robert Young, now prisoner in his majesty's gaol of the county of Cavan, and charged with being married to two wives, both being alive ; these are therefore, in his majesty's name, to will and require you, George Absly, Roger Absly, and Ann Young, to appear before his majesty's lords justices of assize for the north-west circuit of Ulster at Cavan, on the thirtieth day of this instant, then and there to give your evidence, in his majesty's behalf, against the said Robert Young. Whereof you may not fail, at your peril.—Dated at Cork, this 17th day of March, 1680.

HEN. HEN.

WILLIAM DAVIS.

Robert Young's LETTER to the lord bishop of Kilmore, confessing his guilt of some crimes, but denying his double Marriage.

May it please your lordship ; Having deliberately considered the evils I have really done, and the greater evils that have been misreported of me to your lordship, I cannot but acknowledge the justice of your lordship's displeasure ; and I am now so far from making any defence for the disingenuous shifts, my necessities and fears have put me upon, that I have already been my own accuser, and do as much condemn myself as the severest judge can do. And I hope no temptation of secular advantage shall ever hereafter make me so far swerve from the severe rules of virtue, becoming a christian and a clergyman. But though

VOL. XII.

I am willing, in all humility, to submit myself for your lordship's censure for what I have done amiss : yet I hope your lordship's goodness will be my sanctuary, where I am manifestly wronged. There are so many persons of credit here, that knew the gentlewoman, that was affirmed, and, as I hear, sworn to be my wife in these parts ; that I doubt not but it will be made clear to your lordship, that that report was the issue of ignorance and malice ; and I hope a little time will acquit me of what other reports I suffer under in that matter. But, while I am here in confinement, I am in a manner debarred of all expedients to clear my innocence, at least to do it speedily. And, in the mean while, I suffer all the hardship of a gaol amongst people, from whom I can expect no relief, and at so great a distance from such as might relieve me, that I can hope for little comfort from them. May it therefore please your lordship, so far to favour my innocence in this matter, as that I may be brought to hearing before your lordship ; where, if it appear that I have any other wife but her, with whom I have lived in your lordship's diocese, I shall quietly submit myself to the severity of the laws ; if not, I hope my penitence and reformation may in time mitigate your lordship's just displeasure for the confessed faults of your lordship's most humble suppliant,

Lifford, Novem.

ROBERT YOUNG.

26, 1680.

A LETTER from Robert Young to Justice Waldram, offering him a Bribe to let him be bailed.

May it please your Worship ; My mind I thought your worship understood, therefore if your worship does not understand what I mean (as I suppose you do) I will discover it to your worship. I have not any to make my complaint to, but to your worship. Therefore I most humbly beg your worship to take bail, and I will give you forty shillings. Moreover, my brother will bring a letter from captain Sanderson, that my brother is sufficient bail, and that captain Sanderson is satisfied to take him, provided I get any other : and I, not being acquainted with any, in these parts, fears I cannot procure another easily ; but, if your worship will take any other bondsman with my brother, I will give you the aforesaid sum of money, before you take bail : and I will take my oath to your worship, that I will not tell it to any body. Dear Mr. Waldram, do me that charity, for I ly in a sad condition ; indeed, you will do me a singular kindness, and shew a great deal of charity, in so doing ; for I know, if your worship please, it lys in your hands. I desire your worship not to discover any thing, to the bearer, or any other. I intreat your worship, to write your worship's mind to me by the bearer, that I may send him for captain Sanderson's letter to your worship. So I wrest your worship's most humble suppliant to command,

ROBERT YOUNG.

4 B

A LETTER from Robert Young to Roger Yeabsly his brother-in-law, to come and save his life, by forswearing himself.

Dear Brother; *Cavan, Feb. 5, 1680.*

Come along to me, with your sister, for I have fallen under a sad business, and I will lose my life, if you and your sister does not come to deny, that I am not the man. For Christ's sake, dear brother, come along with her, and I hope you shall not be the worse for it; for my life lies in my wife's, and your hands; so that I am certain, you will do what lies in you; if you do not come, I will be put to death; but, if you and my wife comes, you may have many a merry day with me hereafter. So I rest your loving brother, ROBERT YOUNG.

A LETTER from Robert Young out of Cavan Gaol, to his first Wife, Ann Yeabsly, to the same purpose.

When I left you last, I came to Belturbet in the county of Cavan, where I served as curate for the space of half a year, and had 35*l.* a year. Upon which, I spoke to my brother-in-law to bring you down to me, but he seemed unwilling to go so far. At which time, I used too oft, which is my sorrow this day, at one Simon Hutt's in Cavan, cursed be the time, that ever I went there. Whereupon Simon Hutt proffered me 150*l.* with his daughter; and he getting me drunk one night, I was married to her, and was ready to cut my own throat, the next day; but I seeing what a priminary I had by my ludness brought myself in, I saw that it could not be avoided: whereupon I resolved only to stay till I had got the money promised, and then to come to you, my dear honey, and so for you and I to go for England, where we should never be known. But my journey was stopt, for Simon Hutt heard something of my marriage to you, before the portion was paid, and so sent up to know, whether it was so, or no. And so the messenger brought word, that one Robert Young, a minister, was married to one Ann Yeabsly, daughter to George Yeabsly, near Tallogh: but, for all that the messenger brought they knew not whether I was the man or no. So that it may be denied with safety, to preserve my life. For they have clapt me in gaol upon suspicion, where I lie in a deplorable condition, and nobody to help me. Therefore, dear honey, for Christ's sake come to me, and bring my brother Roger along with you; for the assizes is the 6th of March; where I will be tried for my life, and there is not any in the world can preserve it, only you, my dear honey, if you come and say, that I am not the man, you were married to, and bring my brother Roger along with you to justify the same; I will be set at liberty, and then I shall get what money is promised, and go over to England with you. And I wish, that I may never thrive in this world, if ever I leave you hereafter; for I care no more for this husy, than for the durt under my shoe. O curse of God light on me if ever I leave you hereafter, if you

prove so real to me, as to come and deny that I am none of your husband! for there is no way to save my life but that. I wish that I may never see the kingdome of God, if I do not prove as real, constant, and loving husband to you, as ever man did to woman. Dear heart, I know that I have committed a grievous and abominable fault; but I may blam bad company, and my drink for it. Therefore, for Christ's sake, dear honey, forgive me, and come along with the bearer, and clear me. And the curse of God light on me, if I prove false to you, after saving my life, for now my life lies in your hands. I will earnestly repent for what I have done, and I hope God Almighty will forgive me. If I had a hundred wives, it is you alone that is my lawful wife, and shall be to my dying day; for Christ's sake, come and say, that I was not the man you were married to. I say, dear heart, come along with the bearer; and bring my brother Roger along with you. If you do not clear me, I will be put to death; and is it not better for you to come, and tell a lie to preserve your husband's life, and to enjoy him, as long as you live, and I lives; than for to have him put to death, and never to see him again? And this I will assure you, that there will be an order from my lord chief justice to bring you down against the assizes: so that I sent the messenger to prevent that, by giving you timely notice: for you may come and stay in my brother-in-law's house, until such time as we do get our business done. And I will go with you unknown to any body; so hoping you will come and save the life of your loving husband; I rest, dear heart, your loving husband, and till death, ROBERT YOUNG.
Cavan, Feb. 5, 1680.

Here I have sent you the inclosed to my father, and my brother Roger. Pray present my duty to my mother, and my love to my brother John, and William Haskins, and my sister Else; and my blessing to my poor child, if she be alive.

A LETTER to her Father George Yeabsley from Robert Young, proposing the means how he might get off, by his Son and Daughter's perjuring themselves.

Dear Father; *Cavan, Feb. 5, 1680.*

I have declared the reasons and causes of my marriage in my wife's letter, which you may peruse; therefore, dear father and mother, forgive me, for it was a folly of youthhood, and if you come to prosecute to put me to death, I cannot help it. But if you give your consent to my wife, to preserve my life, this shall be a warning to me so long as I live. O! dear father, you know that David, a man after God's own heart, was guilty of both murder and adultery. And therefore, dear father, preserve my life, if you please; and I protest to God Almighty, I will never forsake my poor wife, your daughter, so long as life continues; for it is she that is my lawful wife. And therefore, for Christ's sake, dear father,

send my dear wife and my brother Roger, to clear me by the same means that I have prescribed in my wife's letter. If I were cleared, I could get money enough to do you and I good, as the bearer can tell you. After I am cleared, I will carry my wife and my brother Roger down to see my grany, whom I dare not as yet write to. If you have a mind to save my life, do not come yourself; but send my wife and my brother Roger down to me; and go to Tallow, and get a certificate drawn, and have it signed by Mr. Burt, and Mr. Neesham, that Ann Yeabsly is your daughter, and that she was married to one Robert Young, that they may believe she is the same woman; and that Roger Yeabsly is your son, and that he was standing by when Robert Young was married to your daughter; and if you have a mind to save my life, they must deny that I am the man: for there is no way to preserve my life but that. Write also to Simon Hutt, in Cavan, that you would a comt to see if it were the same person to prosecute him, but only you fell sick; and therefore you sent your son and daughter to prosecute, if it be the same man. So having no more at present to write, I rest your loving son,

ROBERT YOUNG.

My duty to my mother, and love to my brother John, and sister Else, and my brother Haskins, and all the rest of our friends in general.

A LETTER to his second Wife, Mary Hutt, denying his first Marriage, with terrible Curses.

O, my dear Heart;

You know it was for love of you that I brought this misery upon myself, God Almighty help me; I was fully resolved to tell you the contents of all my letters, whenever I could have the opportunity of speaking to you: for my landlady can tell you, that I was fully resolved to shew you the letters, but could not, by reason I could not get speaking to you. O, my dear, have I thrown myself, for the love of you, into all this misery, and you to serve me thus: surely, if you have the heart of a stone, you will not do it. O, if I had but only you here, I would a reckoned all this nothing; but if I be requited thus I cannot help it. O, I wish to Christ I were ten foot under ground, and then you would have your hearts desire as I perceive. Those letters that I write, was only for that woman to come and clear me; for I was afraid that if I had writ any otherwise, she would not come. But upon those letters, I was certain would a com't and cleared me: and then I was in good hopes to have enjoyed you again. If I had my liberty and your consent, I would quickly have brought you out of all your misery. I write purposely to that woman against you, for to have her come and clear me, which, if she did me justice, I am certain she cannot do to the contrary. I wish I may never leave this

place alive, if ever I was married to any other woman upon the face of the earth but you. But if you will be pleased to give me a meeting, I will satisfy you why I write so to that woman; and you will find it so at long running; though I dare not say that my soul is my own here. For Christ's sake take pity on me, and let me not starve in this deplorable condition. For God's sake pay my landlady but only for one month's diet unknown to any; and if I do not prove what I said formerly to be truth, then never pay another week for me again. My dear heart, for Christ's sake do not heed these letters, for I write them only in design to get my liberty, and to enjoy your sweet company again. God let me never see the face of God Almighty, if there was any other design in it. You may believe me a poor miserable soul. I hope you will take all this to consideration, for if I had but only your favour, I did not care for any thing; but if not, pray put an end to my days. I wish that I may never see the kingdom of God and Christ, if ever I was married to any woman but yourself. Indeed I should not take such an oath as this, if I found myself guilty, and knowing not how long I have to live. O my dear soul, you will believe any body before me; I have seen the day, you would not believe any before me; but now it seems the case is altered. I will take the Sacrament to-morrow, and take it on my death if I were going to die, that those letters were write upon no other design; O I wish that I may never see the face of my Saviour, if ever I was married to any other woman but yourself. Surely you may believe me in this sad condition, and know not how long I have to live. If you will but only to do me the charity as to come and speak to me, I will give you full satisfaction why I write to Absly: if you remember, I told you somewhat of that woman before I left Belturbit. O my dear heart; will you not do me the charity as to give me a meeting that I may satisfy you? O! will you, my dear, leave me comfortless in this sad condition? God knows, I lie weeping and writing. I thought I was well enough so long as I had you on my sid; but now it seems all comfort is fled from me; O will not death make an end of this misery! if not, I will if I can conveniently. If you give me any comfort, I will endeavour to clear myself, and take a good heart still: but if not, I wish they would put me out of this misery: for I am sure I shall die with a clear conscience. If you forsake me, I have none to take my part; but if not, I hope you and I shall have joyful days for all this. So hoping you will pity my condition, I rest, dear soul, your loving husband till death,

ROBERT YOUNG.

I hope you will send me an answer by the bearer, what you are resolved to do. If you will pay for my diet unknown to any, my landlady will say that she took my word.

Another LETTER to her from Iniskillin, after he was got out of Cavan Gaol.

My dear Heart ;

I am safely arrived at Iniskillin, and am well at present, and cares not for all your barking dogs at Belturbit and Cavan both. Let them do what they can, I care no more for them than I care for the silliest dog in the street. But as to that, I will leave it off at present. I hope you are mindful of your promise to me in Harris's garden, made to me there. Here I have sent the bearer purposely for you, and I gave him 6s. for going for you. Dear heart, do not fail but come along with him to me, for my life lies where you do : if I had your company, I did not care for all the world. Dear heart, I say again, come to me, for I will assure you have as many tears from my eyes, as there are letters in this letter, from your poor husband. Therefore, dear heart, if ever you intend to see me alive, come to me now ; if you do not, I will make this town my burial-place. I hope you will take nobody's counsel in this case but your own. If your friends will not let you come to me, pray (if you have any love for me) steal away to come to me. Send all your linnen and cloaths of woollen, and my cloaths also out before you, and seal all that you cannot bring along with you ; and be sure not to pay a farthing to any body, but keep it yourself ; take my counsel, I desire you. Dear heart, you and the bearer may contrive the business I suppose, and be sure bring the bond or money along with you, for you know I have but little money when I pay the bearer. I could a had a place, but only it is too nigh your bishop, that dog. Do not fear, for I will soon get a place if I would look for it. So, hoping you will come to your poor husband, I rest, dear heart, your loving husband, till death do us part,

ROBERT YOUNG.

Pray do not trust any thing with the bearer, but come yourself. Dear heart, be sure to bring the bond along with you, if you love me ; and all the papers that you find in my box. I hope you will not fail to perform all that I have spoken.

All these letters of Robert Young's I have set down, just as I found them under his own hand, in his own way of spelling, as I shall do the rest of his which are to follow ; and perhaps some reader or other, who is more acute in such matters than I am, will shrewdly guess thereby, and by divers unusual words and expressions, and his manner of syntax, what countryman he is.

That which next follows, is another of his disingenuous shifts (as he modestly calls them) performed also in Ireland, I mean, his profane invasions of holy orders ; that of deacon, by deluding the lord bishop of Killaloo with forged certificates ; that of presbyter, by his own sacrilegious self-ordination.

To prove this, I shall produce also the un-

doubted evidence of original writings ; wherein, as in those foregoing, and indeed in most of the other papers I have by me concerning him, it may easily be observed, that, besides the main crime they chiefly intend to prove, there is also, here and there, a casual mention made of divers other steps towards his present pitch of perfection.

And particularly, in this whole cheat relating to his orders, it may be observed, that he had always ready divers sets of testimonials, letters dimissory, and letters of orders fitted to his several names, and pretended to be from several bishops ; but let the papers speak for themselves.

A LETTER from one Dr. Nicholson, of Castle-Reah, to the Lord Bishop of Kilmore, concerning Robert Young's forging Certificates.

Castle-Reah, in the County of Ros-
My Lord ; *common, Dec. 22, 1680.*

I received a letter from your lordship concerning Mr. Young ; I am glad he is secured. Upon better recollection of his doings, I remember exactly, that he produced letters of priests orders here, not from your lordship, as I at first supposed, but from the bishop of Killaloo, and that by the pretended recommendation of the archbishop of Cashell ; under whose hand he shewed a letter here, directed as to the bishop of Killaloo and another from the bishop of Killaloo in answer to that, and to acquaint the archbishop, that he had ordained Mr. Young ; several others here saw his letters. I hope his forgery and sacrilegious invasion of the priesthood will receive due punishment, for the necessary discouragement of others of the like impudence. I am your lordship's, &c. EDWARD NICHOLSON.

A LETTER from the same Dr. Nicholson, to the Lord Bishop of Elphin, concerning Robert Young's heinous Miscarriages.

My lord ; *Castle Reah, Oct. 11, 1680.*

I do verily believe, that Mr. Young was never ordained by your lordship, nor any else : he produced parchments in this diocese from the bishop of Kilmore, as ordained presbyter by him, and that by mediation of a letter from the archbishop of Cashel, which he shewed me here, and I suspected it counterfeit ; as also I did his letter of orders ; for which suspicious, if I had had as great evidences then as I have had since, I should have seized his papers ; but being then glad to be rid of him, I dispatched him, without giving him the interruption to meddle with his papers. As to the character of him, I am sure he was a most unconscionable ignorant villain ; he got a bastard here by a kitchen-maid, at the inn he first lodged at ; which he owned himself to me ; and, being needy, I bestowed on him 40s. more than I owed him, to carry him away : yet, when he went to Dublin, he counterfeited letters, under my hand, to my brother, a merchant there, to get 50s. worth of goods ; and did also the same

for Mr. Dalton, to his son-in-law in Dublin. Both the letters were returned to us by the post, and we never heard from him since; but we hear he had a wife living, and another before her, and was seeking for a third very busily. We have heard so much of him since, that we all think it a great pity he was not rather hanged, than employed to serve at the altar: I am certain, if any conscientious person that could apprehend him, would make it his design to rid the church of such a scandal, he would sufficiently appear to have deserved that, if not to be quite packed out of the world. And I assure your lordship, it is no grudge at his person, but perfect charity and zeal for the church, which forces me to give this testimony of him, in obedience to your lordship's commands, which require my character of him; and if your lordship could be a means of preventing him from further proceeding in the profanation of holy things and offices, it would, no doubt, be acceptable service to God and his church; which is only submitted to your lordship's wisdom, by your lordship's, &c.

EDW. NICHOLSON.

A LETTER from one Mr. Fletcher, to the Lord Bishop of Kilmore, to the same purpose.

My Lord; *James Town, Oct. 19, 1680.*

I suppose, my lord of Elphin will be particular with your lordship in the matter of Mr. Young; Mr. Cooke, who was surrogate of Elphin diocese, tells me, he had never letters of orders from that bishop. It is certain, he fled from his cure at Castle Reah, having got a wench with child; and fame says, he has two wives besides the last. I am your lordship's, &c.

BEN. FLETCHER.

A LETTER from the Lord Bishop of Waterford, to the Lord Bishop of Kilmore, concerning Robert Young.

My Lord; *Waterford, Feb. 5, 1680.*

I should have sent your lordship an earlier account of your last to me concerning Young, but I did desire to inform myself the best I could, for your better satisfaction, of his having a wife in these parts, and being chaplain to the earl of Barrimore, and tutor to his son. As to the former, you will receive here inclosed a certificate from the high sheriff of the county, and several of the best of the inhabitants of Tallogh to which I refer you; and, as to the latter, I have spoken with some persons of quality from those parts, who tell me plainly, that Young was never chaplain to the earl of Barrimore, nor went tutor to his son to Oxford; for his son was never there; but, for farther satisfaction, I have employed a friend to the earl of Barrimore himself for his certificate, which every day I now expect. This Young's rogueries and forgeries must needs redound to the great discredit of the church; and I think your lordship has done very well, in taking up his pretended letters of ordination. I humbly entreat you farther, that you would be pleased

to take up that forged testimonial, he shewed you in my name, and to send it to me, who am your lordship's, &c.

H. WATERFORD and LISMORE.

Robert Young's COUNTERFEIT LETTER, from the Lord Bishop of Waterford, to himself; together with his Forged Testimonials from the same Bishop.

Sir; *Waterford, March 30, 1680.*

According to your expectation I have sent you the inclosed, and truly am sorry you left my diocese; but, however, I will be kind to you, if any thing offers itself worthy your acceptance. So, concluding with my blessing to you, I rest, your, &c.

H. WATERFORD and LISMORE.

(L. S.) 'These are to certify, that Mr. Robert Young, cler', and master of arts (whose testimonials from the University of Oxford, in Magdalen college, I have often perused) is a man whom I have known from a child; and knows him to be of a sober and religious, yea, a singular life and conversation; who behaved himself in my diocese, as becometh a labourer in God's vineyard. And, as concerning whose parts, I myself has often sounded them, and knows him to be a singular scholar; yea, I may say, as well qualified for the function as any within my episcopal see, which is not all I have to speak in his commendation. All this I do certify, as witness my hand and seal, this 30th day of March, Ann. Dom. 1680.

'H. WATERFORD and LISMORE.'

A LETTER from the Lord Bishop of Waterford, to the Lord Bishop of Kilmore, and another from the Earl of Barrimore, touching Robert Young's never having been the Earl's Chaplain, or Tutor to his Son, as he pretended.

My Lord; *Waterford, Feb. 18, 1680.*

I acquainted your lordship in my last, that I daily expected an account from the earl of Barrimore, concerning Young's pretended chaplainship to his lordship; I do now send your lordship here inclosed an account thereof from the earl; and do earnestly intreat that your lordship will be pleased to take up that forged certificate Young shewed you in my name, and to send it to me. Our post will not give me leave to write any more, but that I am your lordship's, &c. H. WATERFORD and LISMORE.

My Lord; *Castletyons, Feb. 11, 1680.*

I received a letter from Mr. Dalton, wherein he gives me an account of one Young, who has impudently and falsly called himself my chaplain, and my son Butterant's tutor. I never saw him but once that he brought me a letter from the now high-sheriff of your county, to recommend him to colonel Wittenham (late deceased) at Castletown: if he had been never so

much my chaplain, if he failed in the least part of that duty he owes your lordship, he should not have been owned by, my very good lord, your lordship's, &c. BARRIMORE.

To the Lord Bishop of Waterford.

A LETTER from the Bishop of Waterford to the Bishop of Kilmore, touching Robert Young.

My Lord; Waterford, Oct. 11, 1680.

I heartily thank your lordship for communicating to me the inclosed silly forged certificate, concerning Mr. Robert Young therein mentioned. This Young I never knew till about three years since, when he came to the archbishop of Cashell, with a letter of high recommendation from Dr. Smith to be ordained deacon. The archbishop being somewhat indisposed, and not suspecting the letter, writes to me that I would do that office, and inclosed Dr. Smith's letter to him therein. I knew the archbishop's hand, and his secretary's hand that transcribed the letter: but Young, it seems, not contented therewith, breaks open the letter by the way, and adds a silly postscript (as near as I can remember) in these words: 'More-over, dear brother, fail not to do this office for Mr. Young, for he is a good scholar, and moreover a very good preacher.' This postscript gave me some suspicion: I charged him with it, but he stood stiffly to it a great while, that the postscript was the archbishop's as well as the letter; but, at length, confessed he had broke open the letter by the way, and added the postscript himself. Then I began to examine Dr. Smith's letter, and went into my study to compare it with some I had of Dr. Smith's, which I found to be nothing like, and charged him with that too; and, after a little while, he confessed he had bribed a kinsman of Dr. Smith's to forge the letter to the archbishop; whereupon I gave him a reproof, and dismissed him from me, *re infecta*. The next news that I heard of him, was, that he had forged a letter from the archbishop of Cashell to the bishop of Killaloe, to be ordained deacon, and thereupon he was ordained. But how he came to be ordained priest by the bishop of Elphin, I cannot give your lordship any good account; yet this I have heard, that, whilst he was labouring his ordination there, in few days, he was to have married some poor woman in those parts, had not some person of the neighbourhood where he lived here in Munster, being casually there, discovered that he had a wife and children then living here in these parts: an account whereof, if occasion be, may easily be had. And now, my lord, I have an humble and earnest request, that your lordship would not return this forged testimonial to Young, but either destroy it yourself, or send it by the next, to your lordship's, &c.

H. WATERFORD and LISMORE.

If Young be not free to part with his testimonials and letters of orders too, (if your lordship think good) I pray let him be secured, and

in short time there will be enough to be said against him.

A POSTSCRIPT of a LETTER, together with a LETTER to the Lord Bishop of Kilmore, both from the Lord Bishop of Elphin, concerning Robert Young: having counterfeited Priest's Orders from his Lordship.

Elphin, Oct. 4, 1680.

The inclosed gives your lordship an account of Mr. Robert Young, who was in an ill name before he left us; and since it appeareth that he is *ἀνὴρ ἄνομος*, fills his own hand, the church cannot do herself greater right, than to cast such unsavoury salt to the dunghill.

My Lord;

Mr. Young, alias Hopkins, coming into these parts, and producing letters of orders from Dr. Roan, bishop of Killaloe, was by me admitted in writing under my own hand and seal, to serve a cure in this diocese; that wretched and unworthy man was not by me ordained deacon or presbyter: I had much rather have laid my hands on briars than on such heads. The inclosed has been viewed by such as know his hand, and compared; all conclude it a forgery, the instrument formed by himself, the register's hand counterfeited. How he should get my seal, I am not able to say, unless it was taken off the licence I granted him; and of that there are strong presumptions. I shall acquaint those that knew him there, that he is now in safe custody; and if he should escape without some brand, his scandalous crimes being divulged and spread abroad, it would tend to the great dishonour of God, and to the great discredit of our whole profession. I shall not give your lordship farther trouble, but shall beseech God to direct you herein; and likewise shall watch all opportunities to serve you, and approve myself, your lordship's, &c.

JOH. ELPHIN.

The COUNTERFEIT ORDERS themselves.

'Tenore præsentium nos Johannes Providen' Divin' Elphin' Episcopus notum facimus universis quod nos Dei omnipotent' præsidio in Ecclesia Cathedr' Sanctæ Mariæ Elphinensis vigesimo sexto die mensis Novembr' Anno Dom. millesimo sexcentesimo septuagesimo septimo, Sacrosantos ordines Celebrantes, dilectum nobis in Christo Robertum Young, in Artibus Magistru' de vita sua laudabili morumque et virtut' suaru' donis nobis multipliciter commendat' et per nos etiam examinat' et approbat' et ad Sancta Dei Evangelia Primitus jurat' de Agnoscendo supremam Regiam Autoritat' in omnibus causis tam Ecclesiasticis quam civilibus, et de recusando et Refut' omnes et singulas jurisdictiones forinsecas quas cunque juxta form' Statut' hujus Regni in hujusmodi casu editi et provisi, manuali insuper subscriptione sua assensum et consensum suam præbentem quatuor primis Canonibus Ecclesiæ

'Hiberniæ editis anno decimo regis Caroli
'primi beatæ memoriæ, ad sacrûs Presbyterat-
'tum ordinem juxta morem et ritus Ecclesiæ
'Anglicæ et Hibernicæ editos et provisos, ad-
'misimus et promovimus: ipsumque Robertum
'Young in presbyterum ritè et eanonicè ordi-
'navimus tunc et ibidem. In cujus rei testi-
'monium sigillu' nostrum Episcopale præsentit-
'bus apponi. Fecimus et subscripsimus die mense
'et anno et nostræ consecat' an. undecimo.

(L. S.) 'THOM. BANNESTER, Reg.'
'JOH. ELPHINENSIS.'

'Aprilis 22, 1679.

'Exhibit' fuit hæc licencia in ordinario visi-
'tationis cursu reverend' decan' de Lismore.

'THO. NEESHAM, Reg.'

'Exhibit' in visitatione ordinario tent' apud
'Cavan septimo Aprilis, 1680.'

I think my Reader will say, I have given a sufficient heap of evidence concerning Robert Young's life and conversation in Ireland. And to prove that all these allegations against him are undeniable, (for I would not willingly bely Robert Young himself) I will briefly shew by what certain means I came by my intelligence.

Having, among other papers sent me by archbishop Sancroft, found the aforementioned letter of Dr. Foley's, inclosing one from the lord archbishop of Dublin, I sent a copy of it to that excellent person, my dear and honoured friend, sir Charles Porter, lord chancellor of that kingdom; withal, intreating his lordship to enquire a little farther into Young's character there. Whereupon my lord chancellor took such care, that in a short time I had the originals of all these papers transmitted to me by the favour of the lord archbishop of Dublin; together with a letter from his grace to myself, justifying them all to be authentic, as may be seen in their lordships' own letters, which I here subjoin, as a testimony of the great obligations they have hereby laid on me, and right they have done the world, in respect to Robert Young.

Three LETTERS from my Lord Chancellor
Porter, to me.

My good Lord; *Dublin, July 28, 1692.*

So soon as I received your lordship's of the 14th, with the inclosed from Dr. Foley to archbishop Sancroft, and found my lord archbishop of Dublin was most likely to give me an account of the person you desired from Dr. Foley: I went to him, and told him what reason I had to enquire after one Robert Young; and desired he would give me some directions, how I might certainly know his character. I did not shew him Dr. Foley's letter; but he remembered him and his rogueries so perfectly, that he gave me the same with what is in the letter; and withal said, he did believe he could recover some papers which would give me a full account of all that passed: and, within a day or two after, he came to dine with me, and brought them with him; which I now have in

my custody, and have perused. They are such as shew by his own confession, as well as proof, that he had two wives at the same time in this kingdom, for which he was in gaol; and I find by some of his letters, that he writes to his first wife (wherein he owns his second marriage) he desires her to save his life, by swearing he was never married to her; and promises, if she will do it, that he may gain his liberty, he will immediately go into England with her, and never more see his second wife, who was the daughter of one Simon Hutt in Cavan. It appears by these papers, that he counterfeited the hands and seals of the bishops of Elphin and Waterford to letters of his admission into priests' orders, and the hands of Dr. Wilson, (now bishop of Limerick) and Dr. Nicholson, and the archbishop of Cashell, all certifying in his behalf, as to his morals and learning. In a word, I never met with so infamous a villain. He was degraded by the archbishop of Dublin, when bishop of Kilmore. I know not how he got out of gaol, where he was committed for having two wives, the truth whereof appears by several letters under his own hand. But I will inform myself, and then give your lordship an account. I know not whether you would have the originals of all the papers or copies relating to this rogue; when I know your mind, I will take the best care I can to observe it. I am your lordship's, &c.

CHARLES PORTER.

He has counterfeited other men's hands in bills, and got the money thereupon; one of which I find among the papers.

To the Lord Bishop of Rochester.

My Lord; *Dublin, Aug. 17, 1692.*

I have yours of the 9th instant, and, having shewed it to my lord archbishop of Dublin, he has freely consented I shall transmit you the original papers, which, as soon as I can light of a safe hand to bring them to your lordship, shall be done, they being now with public notary for authentic copies to be kept here. My lord archbishop has also writ your lordship a letter relating to the man, and the matters of those papers, which he sent me just now. I will not be wanting in giving it all possible dispatch, that your lordship may have opportunity to publish what you intend. I am, my lord, your lordship's, &c.

CHARLES PORTER.

To the Lord Bishop of Rochester.

My Lord; *Dublin, Aug. 26, 1692.*

I have now sent you the original papers about Young: Mr. Roberts has promised me to deliver them to your own hands; he goes from this place to-morrow. I have sent also my lord archbishop's letter to your lordship (of which I formerly sent you a copy) in the same box; and have caused a public notary to make copies of all those relating to Young, which I keep by me, as I must also desire your lordship to do the originals; for I have undertaken you will do so: and you will find by what his grace writes, that he desires the same. I am, your lordship's, &c.

CHARLES PORTER.

A LETTER from my Lord Archbishop of Dublin to me.

My Lord; *Dublin, Aug. 17, 1692.*

By permission of my lord chancellor, I had the view of your lordship's letter to him concerning Mr. R. Young, whom I found employed as a curate in the diocese of Kilmore, when I served there. He was delated to me for many extravagancies, the least of which was marrying without banns or license. Though after his avoidance, by running out of my diocese, upon his apprehension in the diocese of Raphoe, whither he had betaken himself, and was sent back to Cavan gaol by warrant of the justices, procured by Simeon Hutt, whose daughter he had married, and her father had discovered to be married to another woman then living; I took the advantage of using all the force of the canon in that case, and degraded him, being then apprehensive of the danger of his hanging in his gown. For this crime he was indicted, but both the women could not be brought together; and if they had, the then riding judge (which as I remember was Mr. Herbert) declared the fact within benefit of the clergy: he was not sentenced, but left still in Cavan gaol for fees and debts contracted there; where Simeon Hutt, an inn-keeper and inhabitant there, by his interest and proper concern, found means of intercepting and getting into his own hands some of the letters of his own hand-writing, and brought them to me. The other, which are written to me, are all realities, and his pretended orders I received of himself before he run away. But, my lord, as I was saying, he was left in gaol, and not knowing how to get out, he used means of applying to my lord duke of Ormond, then lord lieutenant, pretending he could make notable discoveries of dangerous plots against the government. The Popish Plot was then on foot, and his grace, as imported, very tender and cautious of discountenancing his offered service, gave him his liberty, and ordered him to come up to Dublin, and make out what he could. The Scotchman had his end, never appeared, but run away into England with his second wife, and I never heard of him till this overture with your lordship. I indeed did write to Dr. Foley, then in England, to make some enquiry after him, and to give notice of him, that there was such a privateer abroad, and to obviate, as much as I could, the evil practices of so vile a man, and the dishonour of the church he pretended to. It is certain he stole into deacons orders unobserved; he forged his priests orders, and was self-ordained. He was extremely vicious, and had ignorance and impudence enough to offer at any thing. Much of his story (it is so long since 1680), is out of my head, and I wonder how these papers, now sent to your lordship, escaped the general plunder I underwent, when all my books and papers were utterly lost for ever. I cannot otherwise account for their preservation, than that they were all tied together, and

thrown into a box of loose and useless letters, which they who took the rest of my goods neglected, because they had store of better things: and consequently were preserved by a servant of mine; and by a very casual view, since my return out of England, after the late general dispersion, came into my hands as I left them, utterly beyond any purpose or design of mine. However, it fell out happily enough, if your lordship can make any use of them, for the vindication of any honest and innocent person, or the detection of a notorious villain. I beg your lordship would let me know, by some means or other, that you received them, and that you will preserve them; for if they be any way available to your lordship, they may be so (though that be, as this was, more than I can possibly fore-think) to somebody else. I am, my lord, your lordship's, &c.

FRANCIS DUBLIN.

To the Lord Bishop of Rochester.

I have now brought the true Robert Young and his false wife safe into England, though I confess, I had rather any man in England had done it than myself. But now they are here, I will proceed with them in the very same plain and just method as I did before in relating their actions in Ireland; I will trace out their crooked paths as near as I can, step by step, and follow them close at their backs, with an honest hue and cry of original papers, describing them and their crimes.

I have already declared, that after their arrival in England, about the year 1683, upon Robert Young's unlucky repulse at Lambeth, one of the most memorable enterprizes in which he and his woman displayed their art, was the taking upon them the names, first of Green, then of Jones, then of Smith, (all counterfeits of clergymen in distress) and then authorizing the whole cheat by forged recommendations of archbishop Sancroft's: beginning thus to practise on other men's purses by forging his grace's hand, that, when they were more perfect in it, they might attempt with it to strike at his life.

I begin, first, with their cheating dealings under the name of Green, which was the first considerable figure I know of, that they made of themselves in England.

By this having deluded vast numbers of good people in several dioceses, especially that of Norwich, (whereof I have by me a large list of the parochial collections) they came at last, as I have said, to be detected and punished for it at Bury.

Now to clear up this part of their history which concluded there, it will be very material that I should recount distinctly the occasion and manner of their being apprehended, and some of Robert's most notorious enormities even whilst he was imprisoned in that gaol, which was for the space of a year.

When Robert and Mary brought the recommendation falsified under the hands of the lord archbishop of Canterbury, and the lord bishop

of London, to Mr. Cleggat, minister of that town; and boldly required him to ask the charity of the inhabitants thereupon; both Mr. Cleggat, and Mr. Samuel Batteley, a very worthy person dwelling there, (whose brother was then the archbishop's chaplain) soon discerned the knavery, and immediately repaired to the magistrates for a warrant to seize them.

In the mean time Robert Young, alias Youngs, alias Hutt, alias Green, suspecting he was discovered, went directly to his inn, and, with his sister and wife, Mrs. Mary Green, alias Young, &c. presently took horse, and rode as fast as they could out of town, in hopes to have escaped.

Mr. Batteley, believing they would do so, left the constable to bring the warrant, and ran straight towards the inn to look after them; when he soon perceived them on horseback, making all possible speed away. But, by good luck, their horse being weak and poor, he overtook them, laid hold on the bridle and led them back. Whereupon they were committed, tried, and, upon their own confession, condemned and pilloried; as by the record paper will appear, when it shall be produced.

After this Robert ———, what shall I call him? remained in Bury gaol divers months, for not paying his fees, till the summer of 1685. That being the first year of king James's reign, and about the time of the duke of Monmouth's invasion, he thought it a proper season for him to declare (as he had done before in Ireland, upon the like exigency of his affairs) that he could make out a certain discovery of seditious and treasonable practices, wherein divers considerable persons thereabouts were engaged.

To this purpose he not only actually swore treason against one John Pannell (to whom he owed a spite, who was then a fellow-prisoner with him for debt, and is now an officer in the said borough) but also sent up a petition, which he called, a Full Discovery of Treason by Robert Youngs, clerk, to be delivered to the king and parliament then sitting; wherein he offered to prove (if he might have his freedom, and be brought up to London) that divers wicked traitors in that country, particularly ten Presbyterian ministers, one lord, two esquires, a colonel, a captain and a cornet, and a gentleman, had been long plotting and contriving the death of the king, and the subversion of the government.

But, of his whole behaviour at Bury, the following papers, being of undoubted authority, are an abundant proof. It will be enough for me to name them as they pass along by me.

Only here I intreat my reader once for all to observe what is most for my purpose, that such has been the constant method of his life, both before and since, as far as I have been able to obtain any knowledge of it: whenever he was out of prison, he has forged hands to bills, and recommendations to get money: and, when he happened to be imprisoned for those forgeries, then he has fallen to counterfeit mighty dis-

VOL. XII.

coveries of plots against the state, to gain his liberty.

First, then, here are the several Confessions of Robert Young and Mary Hutt themselves, before the justices of peace at Bury, in 1684.

N^o I.

Borough of Bury St. Edmonds,

The INFORMATION of Mary Green, alias Hutt, alias Pierson, alias Young; taken by Martin Spensley, esq. Mayor of the said Borough; Thomas Holland, esq. John Sotheby, esq. and Robert Sharp, gent. Justices of the Peace for the said Borough the 15th day of Sept. 1684.

The said informant saith, that the paper and seal thereunto annexed, pretended to be a certificate from the bishop of Elphin in Ireland, was counterfeited in Ireland, and brought over from thence by her in April or May last; and that she neither hath, or ever had, any husband called by the name of Robert Green; but that all in the same certificate mentioned concerning him is counterfeit; and that the person, who is now in her company, came with her out of Ireland, and that he is her brother, and his name is Robert Hutt; and that they came together to London, where, in the square at Essex-stairs, she met with one whose name she doth not now remember, that writ the petition, which she carried to Windsor, and with her own hands presented it to the king, who delivered it back to one Mr. Bolstred, without any further answer to it. Whereupon she repaired to the archbishop of Canterbury and shewed him her counterfeit certificate from the bishop of Elphin; and he, having viewed it, recommended it to sir John Nicholas, to whom she repaired accordingly, and shewed him the petition which she had delivered to his majesty, and left it with him; and afterwards (as he told this informant) he carried the same to his majesty at Hampton-court; and that, it being read, because it concerned Ireland, the king recommended it to the duke of Ormond, and afterwards this informant had the answer to it from him, mentioned in the paper to which sir John Nicholas's name is subscribed. And further saith, that the paper, to which the archbishop of Canterbury and bishop of London's hands and seals are set, is also counterfeit, and was written by another person, whose name she remembereth not; and that the same person did set the archbishop and bishop of London's hands and seals to it: and saith, that by virtue of the said paper and seals she and her brother have gathered a great deal of money, and thereby abused many of the king's subjects.

MARY HUTT.

The INFORMATION of the said Robert Hutt, taken before us the day and year aforesaid.

Who saith, that the said Mary Hutt (who goes by the names aforesaid) is his sister; and that he never knew any person by the name of

Green or Young, that was her husband; but says, that he living in or about Cork in Ireland, and she in Connaught, above an hundred miles distant, in March last she came to this informant's house, and told him, that she had been married to one Green, a clergyman, and that he, going to sea, was taken by the Turks, and she was going to London to petition his majesty for money for his release; and that she had a certificate from the bishop of the diocese of the truth thereof, and thereupon desired this informant to go along with her, and pressed him so hard therein, that at last he left his own occasions with a friend, and went with her to London, by the name of Green, and knew no other name she had; and at London carried her to one William Young's a drummer, living in Petty-France, beyond Westminster, near the sign of Whitehall, where they stayed all the time they were about London; and during that time she went to Windsor, to petition his majesty; and finding no satisfaction there she applied herself to the archbishop of Canterbury, and bishop of London, sir John Nicholas and others, as in her said information is set down. But saith, that he knew nothing how she came by the said certificates and papers, or who drew her petitions, he knows not. But saith, that upon and with them he hath gone about the country with her, and hath collected several sums of money in several countries in the papers thereof mentioned, he not knowing but all her papers and certificates were true.

Martin Spensley, Mayor. ROBERT HUTT.

The further INFORMATION and EXAMINATION of the said Robert Hutt, taken the day and year aforesaid.

The said examinant saith, that his name is Robert Young, not Hutt, and that the said Mary is his wife; and that they came out of Ireland at the same time afore-mentioned; and that he is in priests orders according to the church of England, and received the same from Dr. Roan, bishop of Killaloo in Ireland, and had a cure of eighteen pounds per annum at Calthorn there, and that he hath preached in St. Margaret's church in Westminster; and confesseth, that all the papers and certificates aforesaid are counterfeited, and were made by one Wright,* a scrivener, in Oxford; and he set the hands and seals to them, except that from the bishop of Elphin in Ireland, which is signed by Thomas Bannester, and was made by him; and he obtained the bishop's seal to it, for which he had ten shillings. And further, that about two years since, he was in England, and applied himself to the archbishop of Canterbury for some preferment, and dined with

* I am certainly informed, that there never was one Wright, scrivener, in Oxford; so that he has abused the name of Wright, as he has done that of Green, Jones, Smith, and divers others.

him; but finding none, he returned into Ireland; and being destitute of friends, he applied himself to this ill course, presuming thereby to obtain charity from the people. And further saith, That the said Wright set sir John Nicholas's hand, in answer to the petition to the king; and for that, and for setting the hands of the archbishop of Canterbury, and bishop of London, he had a guinea.

Thom. Holland. ROBERT YOUNG, Clerk.
John Sotheby.
Rob. Sharp.

Secondly, here are copies of Mary Hutt's petition to king Charles the Second, under the feigned name of Mary Green; and of the forged reference and recommendations upon it.

N^o. II.

To the King's most excellent Majesty, and the Right Hon. Lords of his Majesty's most honourable Privy-Council: The humble PETITION of Mary Green, Wife of Robert Green, of the kingdom of Ireland;

Most humbly sheweth; That your petitioner's said husband being minded to take a voyage into the West-Indies upon some extraordinary occasions, it was his hard fortune to be taken by a Sallee man of war, about six months since, as may appear by a certificate under the hand and seal of the right reverend father in God, the lord bishop of Elphin in the kingdom of Ireland; and that he still remains under the extreme burthen of slavery in Sallee, his ransom being set at a thousand dollars; which your petitioner, in regard of her great poverty, is no ways able to raise; she having two small children, being with child of a third, hath not wherewith to provide for herself and them, but is like to perish for want of relief.

Your petitioner therefore most humbly prays, That your majesty will be graciously pleased to recommend your petitioner's and her husband's distressed condition to the consideration of the clergy of England; and, in his behalf, to request them to contribute their charity towards her husband's ransom, and your petitioner's present relief. And your petitioner shall ever pray, &c.

Read in Council, June 18, 1684.

The petitioner is referred to his grace the archbishop of Canterbury, and bishop of London, to do therein as to them shall seem meet and convenient, for the redemption of this said Robert Green, clerk. JOHN NICHOLAS.

We recommend the petitioner to the clergy of (provided this our order continue no longer than three months) England, intreating them freely to contribute their charity toward the ransom of the said Robert Green. Moreover (on his majesty's command to us) we require, and earnestly desire the respective ministers of all cities, towns, &c. to go from house to house, to receive the charitable benevolence of well-disposed christians, whom we hope will like-

wise contribute to the enlargement of a poor distressed clergyman. Given under our hand and seal, at Lambeth-house, June 16, 1684.

W. CANT. Here ☉ the seal.

H. LONDON. Here ☉ the seal.

N^o III.

Robert Young's PETITION to the Magistrates at Bury, acknowledging his Crime.

To the worshipful Mayor, and the rest of the Justices for the Borough of St. Edmunds. The humble PETITION of Robert Youngs, Clerk.

Sheweth; That the petitioner being not only sensible, as it is apparent, of his bidding adieu to all truth and honesty, and measuring the same by his own humoursofne fancy, making every thing ridiculous, that was not suitable to his own ignorant conceptions; but penitent likewise, thinking himself bound for the future to take a notice, that honesty is the best policy.

Forasmuch therefore, as your poor suppliant being a stranger, and such to most in this kingdom, and having lessee or no friends or acquaintance, humbly beseecheth,

That your worshipes will be graciously pleased to accept of such baile, as your poor suppliant can conveniently produce, whereby he may not in a gaol be compelled to end his days, but have his liberty to compose those differences now depending. The Lord create in your worship's bowells of compassion towards him, who prays for
Your, &c.

Next, here is Robert Young's first letter to the archbishop of Canterbury, 1684, confessing his crime of forgery; but, in all else, giving a very lying account of himself. A letter very singular for the elegance of its stile; and recommended to the reading of all who call themselves Presbyterians.

N^o IV.

Bury, Sept. 30, 1684.

May it please your Grace; This rude and imperfect supplication, being now to pass into your grace's hands, shal I be so bold as to begg your grace to peruse it: in prosecution whereof, I do conceive my birth and education, wil in your grace create a better understanding of me, my life and conversation, than that which the envious man really represents it to be: for envy is ever working upon some or other: for which cause, it is the proper attribute of the devill, who is called the envious man, that soweth tares amongst the wheat by night. But to return, your poor suppliant is (by birth) an Englishman, born of an honest stock at Chester, a town of marchandize on the sea-coast of England, whose grandfather was sir Peter Young's son, and grandmother the duke of Lenox's daughter; the truth whereof, if questioned, may sufficiently, by a gentleman in London, be proved: knowing some persons to delight in giddiness, and accounts it a bondage

to fix a belief, affecting freewill in thinking, as well as in doing. Your poor suppliant likewise (after some knowledge in schoole learning) was removed to Trinity colledge near Dublin; where, in good litterature, he for the space of seven years remained: and from thence, by the instigation of Dr. Smith, dean of Limerick, was employed as a reader; which duty by me was faithfully performed for the space of two years, being then only a deacon. From thence, by the death of the said Dr. Smith, removed I was to serve Dr. John Wilson's cure, sometime fellow of St. Magdalene college in Oxford, who, as chaplain to his grace my lord duke of Ormond, came for Ireland, on which provision (though inconsiderable) admitted I was into full orders, by the late bishop of Clogher, who was a man of that divine nature, that all that knew him had a loss of him: the very memory of whom may justly draw a fountain of water from mine eyes; his favour to me ward cannot easily be forgotten. Thus, in short, your grace has a description of my birth, education, life, and conversation; which leads me to expostulate my present sufferings: I am, and ever was, a faithfull son of the church of England. All discentors were ever odious in mine eyes, specially that damnable faction of Presbytery. If I could, as well as others, have winked at their irregular undertakings, poverty and bondage would not now have dominion over me. But my method was to reduce such factious persons to a regular understanding, and observe wherein, and how far, they have degenerated; although others gleanings, I confess, are better than my vintage, as I am the least of the tribe: yet, I cannot sit still, but, if occasion offered itself, would once more adventure to cast in my mite against such hæresy, as those gifted persons pretended to. But, knowing to whom I speak, I must not hold your grace too long to peruse this ignorant discourse, least I give offence. Lastly, to make an ingenious confession, your poor suppliant in the aforesaid cure, though insufficient if narrowly considered to maintain a family, continued without scandal and corruption, for the space of four years; but by the insufficiency thereof, being but 18*l*. per annum, was forced to borrow money, which sum, at the day prefixed, I could not disburss; whereupon they issued out writs against me: but I considering fortune to be like the market, where, if a man stay a little, the price will fall. Thus I thought it better to meet some danger half way, than to keep too long a watch upon my enemies approach: for, if a man watch too long, as my case stood, though he commit the beginnings thereof to Argos, with his hundred eyes; and the ends to Briareus, with his hundred hands, it is odds he will fall asleep; so that I thought it my best way, for a time, to remove myself and family, to prevent future inconveniences. Whereupon I, with a discontented heart, came for England, and if your grace call to mind, made to you my application; willing was I to take up with the least provision: but no vacancy in your grace's diocess, was the

answer; and withal told me, that my lord of London possibly might answer my request. Whereupon I strait way attended my lord of London, but no satisfactory answer could I find there. On which, what to do I knew not; but the second time waited on your grace, and gave up my lord of London's answer and withal told your grace, that willing I was to go for the West-Indias. Your grace's answer was, that provisions there lay in my lord of London, but being destitute of money and friends, disinabled I was to get thither, unless I had sold myself for a bond-slave, which I was not willing to do. So that for Ireland I again repaired; but no sooner was I well there settled, in a cure far remote from the other, but news my creditors had; for which, without my salary, glad was I to flee again in a distracted condition; and came, accompanied with my wife, to Oxford; where friendship I did endeavour to create, but all in vain. From thence went I towards Bristol, thinking to have made my address to the bishop of that diocese, but supplanted I was by his death. So that myself I applied to the body of the clergy, but meet not with a satisfactory answer. My second application was to desire them to disburse money for our freight; but meeting not with my desired success, I came away, not knowing which way to turn myself: to go and steal, I would be hanged; to take by violence a purse, I would be in the same condition: to work, I knew not which way; to beg of the clergy (so many cheats going about) I knew, being a stranger, they would, though undeserved then, pass on me the same sentence. Thus friendless and moneyless, we came to Oxford, in a sad condition, and accidentally meet with one Wright by surname; who after some days acquaintance, put me upon this hellish stratagem upon your grace, which forgery he committed, although I am not thereby excused. Truly a terrour to my conscience was it every hower, knowing such clandestine actions to be both against the laws of God and man. O fie! that ever it should be said that a clergyman have committed such dirty actions. O! that my eyes were a fountain of water, to weep for remission, for pardon, for satisfaction, both to God and man. For sure I am the unjust shall be punished in the next world, if not in this. I acknowledge my crime to be great, the Lord give a right understanding of my error; wherein I have offended both God and man: and what shall I do, or what shall I say to mitigate this crime? 'Tis true, I am heartily sorry, which perhaps, in your grace, may create mercy; but not pardon from my God, without a loathing and hearty detestation of such unlawful ways of gain, and an absolution from a bishop. Truly my intention, after the receipt of 20*l.* was for the West-Indies; no more did I desire than what would carry my family thither: but disappointed I was by the just judgement of the Almighty; all we received was spent to recover my wife's health; seven weeks did she lye sick, which the justices here are not ignorant of; and

what little stock we had was exhausted, so that we have neither friends nor money. Your poor suppliant therefore, in most humble manner, beseecheth, That your grace will be graciously pleased, to regulate the hearts and minds of these justices who have committed my poor sickly wife, as well as myself; and, by your grace's letter, to animate their hearts to charity, the sessions being Monday next. 'Tis true, I have in a most gross manner incurred your grace's displeasure, and does not deserve the least favour, especially at your grace's hands; for which, from the bottom of my heart, I humbly beg your grace's pardon, beseeching your grace in justice to remember mercy; and though your grace may cast a severe eye upon the example, yet I humbly beseech your grace, to cast a merciful eye upon the person, to whom this shall for ever be a warning-piece, and subscribes himself, your grace's most penitent and obedient servant,
ROBERT YOUNG.

My Reader finds, that this first letter of Robert Young's to archbishop Sancroft, which seems full of remorse and solemn detestation of his former wickedness, in forging his grace's name, was dated in prison at Bury, Sept. 30, 1684; but, to shew what kind of penitent he was, I will here subjoin the informations of divers persons at Bury in 1685, touching Robert Young's threatenings against the archbishop of Canterbury's life, not long after he had written this first letter.

N^o V.

Bury St. Edmund's, Mar. 27, 1685.

Memorandum, that we whose names are underwritten, being in company with Robert Young, (who was laid in Bury gaol for counterfeiting his grace the archbishop of Canterbury's hand and seal, &c.) he spoke these words immediately upon hearing of his late majesties death, which was Saturday, Feb. 7, 84. "Is the king dead? Then have at the archbishop of Canterbury's head." These words were spoken in his chamber in my hearing. Witness my hand,

THOMAS BOUME.

The same day in the cellar, the said Robert Young declared, That, now the king was dead, he would have the archbishop of Canterbury's head off. Witness our hands,

JOHN PANNELL.

MATTHEW † BAXTER,
his mark.

And at other times, in my hearing, and others that are now out of town, the said Robert Young declared, That, if ever he got out of prison, he would revenge himself on his grace the archbishop of Canterbury.

JOHN PANNELL.

At another time, some two or three days before, the said Robert Young, upon hearing of his majesty's death, did in the hearing of me John Rewse, in the said Young's chamber, in Bury prison, say these words: Some of my

enemies may repent what they have done to me: it will not be long ere the archbishop of Canterbury's head be off.

JOHN REWSE.

William Rose, of Elmswell in the county of Suffolk, yeoman, saith, that Robert Young, a prisoner in Bury gaol, upon hearing of his late majesty's death, did publicly say these words following, viz. Now, by God, have at the archbishop of Canterbury's head. And that, at several times, he hath discovered himself to bear hatred against his grace, and hath often spoken reproachfully against his grace.

WILLIAM ROSE.

Sixthly, here is Robert Young's second letter to the lord archbishop of Canterbury; confessing still his own guilt, but intended chiefly to weaken the evidence of John Pannell, one of those Bury witnesses, by accusing him of treason.

N° VI.

Bury, July 23. 85.

May it please your Grace,

In the first place, all that I design in this letter, is an apology for myself, to ask pardon for my transgression against your grace (although deluded thereto) hoping that this my mean and weak supplication will be sheltered under the canopy of your profound charity. And seeing I have, by wicked advice, consented to things misbecoming an honest man, most reverend father, let not my honesty be tainted therewith, but evil counsell justly blamed; which, for ever hereafter, shall be a warning piece to me never to commit the like again: but by honest and christian endeavours, to provide for himself and family, whose conditions are now reduced so low, that perish they must unless by your graces clemency eased. Furthermore, I do promise to do your grace that justice, as to bring in the first actors and contrivers of that wicked action, who did not only encourage me, but several imposthims they likewise have sent abroad, which I can prove. Having thus far declared myself, and endeavouring to take off such aspersions as might possibly have been thrown on me; give me leave to acquaint your grace, that I am given to understand, that one John Pannell have lately sent your grace a petition, intreating you to incense the judge, that comes this circuit, against me; which petition I humbly desire, and beseech you, for your honour, to disregard. For that person is a rebellious traytor, and have declared himself so to be; his words and intended actions are, in breve, as followeth: He called the king a popish dog, a rogue, and said, that he has taken that which was none of his own, but the duke of Monmouth; he has said likewise, that he would do his endeavour to chop off that popish rogue's head. "Si indixeris mihi ut singula dilatem, non recusabo; modo tempus mihi concesseris: nam statim hoc facere, non est harum, quoad corpus, virium: paratus semper dicere, qui sunt

subditi probati et qui non." My lord, I thought fit thus to acquaint your grace, that you may not so much as mention his name with any due respect; his factious ancestors will make him notorious enough, if no treason were objected and laid to his charge. But seeing what I have in part acquainted your grace with, will next assizes be sworn against him by three evidences, and the king likewise acquainted therewith; and the said John Pannell a great finatick. I humbly have sent your grace (out of that love and affection I bear to my king and to the clergy) this caution of the said John Pannell. So I take leave, desiring to remain

Your graces most humble servant,

ROBERT YOUNGS.

Seventhly, Here is the true hand and seal of archbishop Sancroft, which Robert Young having torn off from a real instrument of his grace's that he had casually lighted on, prefixed a false licence to it to beg in three other dioceses; and that dated even after the former letters to the archbishop, and after he had been pilloried at Bury for the first forgery.

N° VII.

We recommend the petitioner to the diocesse of Oxford, Lincoln and Sarum, humbly beseeching the clergy of all cities and corporations (within the aforesaid diocesses) to go from house to house to receive the benevolence of all charitable christians, towards the relief of a poor distressed clergyman.

Given under our hand and seal, at Lambeth house, Jan. 2, A. D. 1685.

(L. S.) W. CANT.

Two papers relating to a false plot in king James's time, which Robert Young offered to discover at Bury, when he was prisoner there, in the year 1685: both which papers are written with his own hand, and were taken out of his pocket when he was searched for instruments, wherewith he designed to break prison there.

The first paper, which seems to be a letter to some lord at court, concerning Robert Young's plot in 1685, but is not superscribed.

N° VIII.

Bury Gaol, June 13, 85.

May it please your Lordship:

Although I have been, and also am unwilling to trouble you with my letters, yet, notwithstanding, the treacherous speeches and intended actions of wicked rebels forceth me thereunto at present. I leatly a petition to the king and parliament sent, which petition (declaring in part the purport of what I have to say) I humbly beseech your lordship, for the love of a gracious king, to take care of, and so far, that king and parliament may therewith be acquainted. Nothing is therein delivered, but what I, by sufficient evidence can make appear to be truth: justice will in no wise for the king here be done, the reasons when

removed, I'll produce, but here I dare not; I humbly desire, before his royal majesty, and his high honourable court of parliament, to be, as soon as may be, called up, where with justice, and not with partiality, I may be heard to speak.

[And here follows some of his former sort of Latin, which I set down as I find it in his own hand.]

De his rebus omnibus obsecro et suppliciter imploro te mihi rescribere literam, in qua si indixeris mihi ut singula delatam non recusabo, paratus semper ostendere, qui sunt probati, subditi et qui non. Nihil jam superest aliud scribendum, nisi quod supplex orem ut omnes actiones secundat Deus optimus maximusque. Et ex toto corde vale.

Tuæ salutis & amplitudinis.

Ex Carcere 13^o die mensis, Julij A.D. 85.

Cupidissimus, &c. R. Y.

The second paper, which is the original petition that Robert Young sent up to be presented to the king and parliament in May 1685, when he promises to make out the discovery of his plot, if he might have his liberty, and be brought up to London to be the king's evidence. This is also recommended to the reading of the Presbyterians.

A full Discovery of TREASON by ROBERT YOUNGS, Clerk.

To the most high and mighty Prince, James the Second, by the grace of God, King of Great-Britain, France, and Ireland, defender of the Faith, &c. and to his most Honourable and High Court of Parliament: the humble PETITION of Robert Youngs, Clerk, now a prisoner in Bury St. Edmunds, in the County of Suffolk. In most humble and lamentable wise complaineth unto your Majesty and your High Court of Parliament.

That whereas your most obedient subjecte, living under the laws of God and your majesty's realms, in the days of the late gracious king Charles the second, of ever blessed memory, did in all things shew himself a true, faithful, and obedient subject, according to his function, as well as in the sincere administration (according to the Church of England) of God's holy word, as in due obedience to the higher powers. Your said suppliant, notwithstanding, contrary to all laws of justice and equity, was notwithstanding, in very extream manner, not only cast into prison (where he, being altogether a stranger, have these eight months by past continued) but likewise (last assizes nothing being objected against him) bound over to his good behaviour, where he will (through malice, and for fear of discovering their rebellious and clandestine actions) perish inevitably; for such is the malignity of your majesty's enemies against your poor subject, that they keep him close locked up, not suffering his

wife to come to him, giving order likewise, that all pen, ink, and paper, should not be permitted to be carried to him, least he make complaint. And the more severity they show, because your obedient subject did discover one John Pannel, who, like a rebel and traitor, did call your sacred majesty a popish dog and rogue; and said, that he, against your sacred majesty, would fight for the duke of Monmouth so long as he had blood in his body. Moreover, Feb. 7, 1684, about three o'clock in the afternoon, he swore, that now he would accomplish his long designed and intended purpose. Now, said he (news being brought a little before that the late king was really dead) I will have that popish rogue's head, &c. Now by the discovery hereof, your poor subject have to himself enemies innumerable created, and yet will (so long as life continues) stand firm and unshaken, notwithstanding all the vain attempts and impetuous assaults made against him by such men as are given to change, and have always discovered a greater regard to their own treacherous and rebellious spirits, than to that duty and legality which they owe unto your most sacred majesty. All these things, and much more shal against John Pannel, and others (whom to discover here were to no purpose) be confirmed by three witnesses. Many are the conspiracies and conspirators, who have plotted and contrived how to bring their wicked enterprizes to an head. In order hereunto (as in conscience obliged, and as a faithful subject to your majesty) can and will make a full discovery of ten Presbyterian ministers, one lord, two esquires, a colonel, a captain, a cornet, a gentleman, who having long since plotted and contrived the death of your most sacred majesty, and the subversion of the government now established amongst us, and still continues their hellish devices, who (if in time not prevented) will (with a sad memento) make known what your faithful subject doth now in part relate, they having promised, vowed, and protested, that if ever your majesty came to the crown, enjoy it you should not one year to an end. Such evidence against them singularly shall be produced, as to the consciences of all loving subjects shall seem reasonable and sufficient; and if your poor subject does not prove by sufficient evidence what he now affirms, your said subject offers himself then to the most heavy punishment that it shall please your majesty to appoint.

In consideration whereof, may it please your most sacred majesty, and this your high court of parliament, graciously to take the premises so far into your tender consideration, as to call up to London before your princely majesty your poor subject, who will in full discover all those clandestine actions and hellish stratagems of rebellious and treacherous rebles, who intends no goodness towards your royal person, whom God preserve, &c. which thing being granted, your said subject doubts not but that it shall plainly appear *de unde* by suffi-

cient evidence, who are faithful subjects and who not. Wherefore for the tender mercy of God, your said subjecte in bonds and irons, most humbly beseecheth your majesty, and this high court of parliament, benignly and graciously to grant this petition, tending so graciously to the preservation of your majesty and the government now established amongst us, &c. And your petitioner, as in duty bound, &c.

In this last, and in several of the foregoing papers, my reader finds mention of one John Pannel. Upon this there depends a story which must not be omitted, because it is sent me from Bury, attested under hand and seal by persons of known credit and repute: and with this I shall end all Robert Young's transactions at Bury.

It appears, that this John Pannel had not only fallen into Robert Young's displeasure, by his having been one of the witnesses of his menaces against the archbishop's life, but also for having prevented Robert's designed escape out of the common gaol there.

Robert Young, in revenge of all this, not only wrote to the archbishop against him in the venomous manner, as appears in his second letter to his grace, that there should be high treason sworn against the said John the next assizes, and not only also named him as guilty in the foregoing petition to the king and parliament, mentioning in both the particular treasons, but effectually made good his word; and the very next assizes at Ipswich, for the county of Suffolk, in the same year 1685, prosecuted John Pannell for his life before the lord chief justice Jones.

Nay, when it was objected by the judge, that this was but a single witness, Robert immediately took care to supply that defect, and out of hand produced Mary to swear the very same words, and the very same time and place, as her foreman had sworn before her.

So that had not the lord chief justice been seasonably informed of the profligate reputation of Robert and Mary; and had not the deputy-gaoler of Bury proffered voluntarily to take his oath, that Mary was really absent from Robert, and had been so for a good space, both before and after the time, when the treasonable words were pretended by Robert to have been spoken by John Pannell, the poor innocent man had been in danger of being hanged for a traitor to king James, by the perjury of these two wretched gaol-birds.

But thus much for Robert and Mary Green, &c.

Next we shall behold the same farce acted over again by the same persons, under the disguised names of Robert and Mary Jones; John and Mary Smith; she the wives of him the rectors of the same Ashford in Kent, and both at the same time.

Nay (to shew how necessary it is that great lyars should have great memories) we shall see, that two of these pretended recommendations, from archbishop Sancroft, do very un-

happily bear date the very same day, September the third, of the very same year, 1687, for the same woman, under different names.

First, Here are the forged recommendations, pretended to be from archbishop Sancroft, of Mary Hutt, both as Mary Jones and Mary Smith, to the lords bishops of Chichester, Norwich, and St. Asaph: the body of these letters being an imitation of his grace's own hand, but all the subscriptions counterfeited to admiration.

N^o I.

My Lord; This is to acquaint your lordship, that one Mr. Robert Jones, rector of Ashford in my diocese, is a prisoner for debt, occasioned by suretyship; he is a person well known to me, and deserves our assistance. I hope you will therefore give his wife (who will suddenly attend your lordship) licence to ask and receive the charity of your dean and chapter, towards her husband's freedome, as we in our diocese have done. I am, your loving friend and brother,

Lambeth, June 11, 1687.

W. CANT.

To the Lord Bishop of Chichester.

My Lord;

This is to acquaint your lordship, that one Mr. John Smith, rector of Ashford in my diocese, is a prisoner for debt, occasioned by suretyship; he is a person well known to me, and deserves our assistance. I hope you will therefore (as other of our brethren have done) extend your charity toward his freedome; and likewise recommend his distressed condition to your dean and chapter, or in his absence to the subdean. I am, my lord, your loving friend and brother,

Lambeth, Sept. 3, 1687.

W. CANT.

To the Lord Bishop of Norwich.

My Lord;

This is to acquaint your lordship, that one Mr. Robert Jones, rector of Ashford in my diocese, is a prisoner for debt, occasioned by suretyship; he is a person well known to me, and deserves our assistance. I hope you will therefore extend your charity toward his freedome, as we in our diocese have done: and likewise give his wife (who will suddenly attend your lordship) licence to ask and receive the charity of your dean and chapter. I am, my lord, your loving friend and brother,

Lambeth, Sept. 3, 1687.

W. CANT.

This letter was sealed with a bishop's seal and a wafer; and the stamp under-marked on the back of it, to signify what part of the town it came from.

To the Lord Bishop of St. Asaph. (IV)

Secondly, Here is a forged letter from Dr. Fauconberge, secretary to my lord archbishop, accompanying that letter to the lord bishop of Norwich; wherein is a false list of what sums other churches and churchmen had given, to excite his lordship and his church and diocese by those examples.

N^o II.

Sept. 3, 1687.

May it please your Lordship; I am commanded by my lords' grace of Canterbury to send this as a cover to the enclosed; and to let your lordship know, that Mr. Robert Smith, (brother to the prisoner) is appointed as the receiver. Therefore your lordship is humbly desired to transmit, by bill of exchange, your lordship's charity, together with the dean's and chapters, to the aforesaid Robert Smith, living in Maiden-lane, in Westminster, and so soon as your lordship possibly can. Your lordship's, &c.

HEN. FAUCONBERGE.

I am likewise commanded to transmit you the Names of those that have already given.

	£.	s.
By the Lord archbishop of Canterbury	20	0
Dean and chapter of Canterbury	45	0
Bishop of London - - - -	10	0
Bishop of Ely - - - -	10	0
Dean and chapter of Ely - -	8	0
Bishop of Rochester - - -	4	0
Dean and chapter thereof - -	7	0
Bishop of Winchester - - -	12	12
Dean and chapter thereof - -	9	0
Bishop of Sarum - - - -	5	0
Dean and chapter thereof - -	12	0
Bishop of Chichester - - -	4	0
Dean and chapter thereof - -	5	0
Bishop of Exon - - - -	4	0
Dean and chapter of Exon - -	10	0
Bishop of Bath and Wells - -	5	0
Dean and chapter thereof - -	5	0
University of Oxford - - -	25	0

Thirdly, Here are letters of those three bishops written at that time, acknowledging that they were every one deceived by an imposture so well managed; though they were some of the archbishop's most familiar friends, and perfectly acquainted with his grace's hand.

N^o III.

May it please your Grace;

I have returned the letter which came to me in your grace's name on the behalf of Mr. Jones, pretended to be of your diocese; and now find enough in it to have made me suspect the cheat: but your grace's name (too well counterfeited) and the great deference I make to it, superseded all further consideration. And, although I communicated it to the dean and chapter (who are not unacquainted with your grace's hand) yet none of them saw through it. It is much to be feared, that the cheat is still carried on, and too successfully: for he must be more sagacious than I am, whom such a letter coming by the post, then followed within two or three days by the woman herself, would not impose upon. After all, I am much more concerned for the abuse that is put upon your grace, than for that little which I suffered by it; and heartily wish the cheat detected and discovered, that your grace's name may be no

longer prostituted to so vile a purpose, whilst so great a veneration is paid to it by all good men. I am, my lord, your grace's, &c.

To the Lord Archbishop of JOHN CICESTR.
Canterbury's Grace.

Norwich, Sept. 5, 87.

May it please your Grace;

In pursuance of the inclosed recommendation, I applied myself to Mr. Dean, and the prebends of this church, for their charity, towards the relief of Mr. John Smith, rector of Ashford in your grace's diocese, as the letters set forth. Mr. Dean, and the prebends, allotted 5*l.* to Mr. Smith, which sum, with my own mite, would have made up 10*l.* and this sum was to be paid by Mr. Dean at his arrival in London; and of this I gave a hint to Dr. Paman in my letter to him: but since we learn from the Gazette, that the whole contrivance was a cheat and a forgery; and for the further discovery of it, I have sent the inclosed to your grace. I am your grace's, &c.

To my Lord Archbishop of WM. NORWICH.
Canterbury his Grace.

May it please your Grace; Sept. 6, 87.

I have received your grace's letter of the 3d instant by this post; the effect of it is, to bespeak the charity of this church for one Mr. Robert Jones, rector of Ashford, who is a prisoner on the account of suretyship; the cause for which he suffers, does not at all commend his suit; but that which follows does very much: that he is known to your grace; and that you judge him to be one that deserves our assistance: on that account he shall have it from me in such proportion, as your grace shall think fit; and of that your grace shall judge at my coming up to London, which will be about six weeks hence, if God permit; or, if you will not judge, I will tax myself as I would do any other man in my condition, and so much beyond, as I ought to be stricter with myself than any other. I am, my good lord, your grace's, &c.

To my Lord Archbishop of WM. ASAPH.
Canterbury his Grace.

My most honoured Lord; Sept. 13, 87.

I send your grace, here inclosed, that piece of forgery which came this day se'nnight, as a letter from your grace. I saw your name to it so well counterfeited, that I did not examine the hand in the rest of the letter; nor took notice of the false spelling in the word *acquaint*, and twice *diocesse*; which I should have boggled at otherwise. But your name, which I doubted not to be of your grace's own hand, was enough to assure me the whole letter was yours. And whether you writ it in haste, or had an *amanuensis* to write it, I was not curious to examine; or whether it was forged, which I now understand was the case. The woman rogue, by whom, or for whom it was forged, having thus made ready the bait, and hanged me upon it, came and drew up her line the next day; there she had 5*l.* upon her hook;

and with it she got a subscription into her paper, which she carried into Bangor; and there, I doubt not, having baited the water with a letter from your grace, and having a subscription to second it, she hooked as much more between the bishop and the dean.

To my Lord Archbishop of Wm. Asaph.
Canterbury his Grace.

Having now followed Robert Young, and his pretended wife, to the end of the first great turn of their affairs in England, it is but reasonable, that I should use the same exactness as I have done in that part of their story which was acted in Ireland, that I should declare by what means I have had the certain information, which enabled me to trace them so narrowly also in this part of their adventures.

It was soon after my deliverance from them, on June the 13th, that I desired Mr. Needham, chaplain to archbishop Sancroft, to let him know what danger he had escaped, together with myself and others. Immediately thereupon, his grace gave him notice of his own former rencounters with the same Robert Young; and withal ordered him to let me have a sight of most of the foregoing papers.

Having perused them, and perceiving they would effectually contribute to the farther confusion of the wretch, I intreated his grace to resign them to my disposal, and to recollect what he could farther remember on this subject.

To which request, I received these following answers from that excellent prelate: whose name alone would be sufficient authority in matters of far greater concernment than this; there being no good man that I know of, who has him not in the highest esteem for his integrity and piety.

A LETTER from Archbishop Sancroft to me,
dated July 13, 1692.

Fresingfield, July 13.

My good lord and brother;

I have just received your's of July the 5th, and, having read it over, immediately take up my pen to tell you, that, in compliance with your earnest desires, I give up and consign into your lordship's hands, all the papers concerning Young the falsary, which I sent to Mr. Needham, to be made use of, and disposed as your lordship, in your discretion, shall think fit; with this caution, notwithstanding, that, whereas there are amongst them some letters of my old dear friends, bishop Lloyd of Norwich, and bishop Lloyd of St. Asaph, (who are both at present in or about London) no use be made of them without their privity, nor any further than they shall allow.

As for the narrative you desire, you shall certainly have it, as well as my old leaking memory will enable me to form it: but, though I must take the longer time for that, yet, because you tell me you long (with some impatience) for my answer to the rest; I have hastened to give it (and my kindest respects)

VOL. XII.

with that readiness and heartiness, which becomes, my lord, your lordship's, &c.

For the Lord Bishop of Rochester.

A second LETTER from Archbishop Sancroft to me, dated August 24, 1692.

My lord; I remember well what I wrote to you in a former letter, concerning the narrative you desired, of what passed heretofore between me and Robert Young. But, when I sat down to make it, I found two things lying directly in my way. First, I was credibly informed, that you had wholly laid by your design; and, secondly, many years having passed since those things happened, and I having lately cursorily read over the papers I sent you; my memory did not serve me, without them, to judge where they were defective, or how any incoherence in them might be supplied.

But now that I am assured, that you are in good earnest going on with what you intended, and understand what are the particulars that remain still obscure to you in those papers; I will not only endeavour to clear those, but the rest of the story, as far as I can remember it.

He was twice with me at Lambeth; the first time, within a month after he was degraded at Dublin, to desire some employment in the church; in order to which, he produced letters of orders, which I very much suspected. For besides, that they were not, as I remember, in form, and in the usual style; there was fixed to them, with a label, a great episcopal seal, such as we put to our leases; which, upon my objecting it, he affirmed to be the custom of the bishops in Ireland. And, when I told him I had no employment void in my gift, he was very earnest with me to recommend him to the bishop of London; with a design, I suppose, that he might have a copy to write by in his intended forgeries; but I refused.

Some time after, he came again, since when I never saw him, to desire me to recommend him to be a chaplain to a ship, or in some of the plantations; which I again refused (for, in truth, I never liked him from the beginning) telling him, that it was a part of the bishop of London's province.

In the mean time, having acquaintance with Dr. Foley, the archbishop of Dublin's chaplain, who was then in England; I sent to him for some better information concerning this importunate bold man; which produced those letters which are in your hands.

About this time he sent his woman to Windsor, with a petition to the king, pretending, that her husband, going to be minister at one of the foreign plantations, was taken by the Turkish pirates; and begging a share in the money collected for the redemption of captives. His majesty referred the petition to me and my lord of London; which yet I never saw, nor heard of, till a good while after. In the

mean while, they had forged a report upon the reference, under both our hands and seals, to bring them into a share of the redemption-money.

By this time, or before, he had gotten, I know not how, one of those instruments by which we grant places in our hospitals of Croydon and Canterbury; they are written in an expanded sheet of paper, with a margin broad enough to receive the seal which we use on those occasions, and which was usually placed about the middle of the instrument. This margin he tore off, with my subscription under it, finding room enough above it to crowd in a licence to beg in three dioceses, which I wonder any man should take to be mine; both because I had upon all occasions refused to give, even worthy persons, licence to beg; and because I could not (mean as I am) be reasonably thought so silly as to bespeak three dioceses in so wretched a stile, and in such a wretched scroll of paper.

However, this gross sham, improbable as it was, prevailed with many of my friends, and he drained a great deal of money from them, till some one (I have forgot who) seized that miserable, pitiful slip of torn paper (the most contemptible that ever had the impudence to set up for a metropolitain rescript, since the order came first into the world) and sent it to me, which was the first notice I ever had of his practices.

After this, for several years I heard not one word of Robert Young, nor knew what was become of him, till at length enter Mrs. Jones (in truth, as it proved Young's wife, or worse) pretending to be the wife of a clergyman in my diocese, then a prisoner for a vast debt, carrying in her hand a letter of mine, wholly forged, to desire the contributions of the bishops and clergy for his enlargement. I knew I had no such clerk in Kent, and though she changed the name to Smith, I think of Ashford in Kent, yet still about she went with forged letters, applying herself to my particular friends, who, with their clergy, were very bountiful to her. When I had notice of it, I disavowed the letters, as I had reason, there being manifest characters of forgery upon them; and sent to the bishop of St. Asaph to lay hold of her, and send her up to London, but she escaped us.

Whilst she was at work so far off, Young himself was playing the like pranks in my native country, where he got a great deal of money; but, coming to Bury St. Edmunds, Dr. Battely's brother, a magistrate there, observing his impudence, sent for a constable, and brought him and his quean, who by this time was come to him, before the recorder, &c. by whom, upon examination, they were imprisoned there. You have the copies of the examinations, and his original letters and confessions to me; and also copies of the informations against him, that he swore in prison he would have my blood; but how he got out of prison (unless it were because nobody prosecuted him)

Dr. Battely can better inform you than I, to whom therefore I refer you.

My lord, thus far I have gone, out of my desire to serve you, and shall be ready in any particular to give satisfaction, as my old weak memory will enable me; for I confess I most earnestly long to see this foul imposture detected, and right done to so many innocent persons, whose ruin he hath sought in the basest manner. I am, my lord, your lordship's, &c.

Fresingfield, Aug. 24, 1692.

To the Lord Bishop of Rochester.

As far as my intelligence goes, the only punishment which the authors of all these last gross cheats sustained, after they had found them so long a time successful, was that they were pursued through England by these two advertisements in the printed Gazettes of the year 1687.

Advertisement in the Gazette, Sept. 22, 1687.

Whereas a woman pretending to be the wife of R. Jones, rector of Ashford in Kent, hath gone about England and Wales, begging the charity of several persons, for the relief of her said husband, whom she pretended to be in prison for debt; and hath both forged several letters, as from his grace the lord archbishop of Canterbury to several bishops, and received several sums of money. These are to give notice, that there is no such person as R. Jones, rector of Ashford, and that his grace never wrote any such letters. It is therefore desired, that, if the said woman can be met with, she be apprehended, and dealt with according to law.

Advertisement in the Gazette, Oct. 6, 1687.

Whereas a woman, pretending to be the wife of R. Jones, vicar of Ashford in Kent, and now in prison for debt, and one who calls himself Smith, and pretends also to be vicar of Ashford, have forged several letters as from the archbishop of Canterbury, and, begging up and down in several parts of England and Wales, have received several sums of money. These are to give notice, that neither of these men is vicar of Ashford, and that the archbishop never wrote any such letters. It is therefore desired, that, if the said persons can be met with, they be apprehended, and be dealt with according to law.

But how they got clear of this ill affair, whether they suffered any corporal punishment for their going under the names of Jones and Smith, as they had done for those of Green, I am not yet certainly informed. For the present I am rather inclined to believe that they escaped unpunished, because the meek archbishop Sancroft would not permit them to be prosecuted in his name; for which they have since well rewarded him.

But this I only speak upon conjecture; and the truth is, it is impossible that the world should ever have an exact account of Mr. Ro-

bert Young's whole life, unless he himself would be pleased to write the counterpart of his story.

But it was not long after this, that Robert Young and Mary took the short turn they had at Bromley; which was indeed so short, that they were vanished thence before I knew of their being there. Only as to the man's ill character, during that time, and his frequent boasting of his abilities in forgery, I am furnished by a worthy gentleman, my neighbour, with the ensuing certificate:

These are to certify, that, during the short time of Mr. Robert Young's office at Bromley-college, which as I remember, was about six weeks, he went under an ill character of his wicked living; particularly I have heard him brag, before Mr. Roman and others, that he could counterfeit any man's hand in England. Witness my hand the 1st of Sept. 1692.

WALSINGHAM KING.

Now, because this is the proper place, I have here ready for my reader, as I promised him, the entire letter which Robert Young wrote out of Newgate, to the widows of the college at Bromley; whereof I cited before some honest truths, and quaint expressions:

Madam;

Begging your pardon for this my rude attempt, I humbly crave leave thus to set forth my present miserable condition unto you, and all the rest of the worthy gentlewomen belonging to that college, to whom, I hope, you will communicate this. I have been almost twelve months a prisoner, confined, destitute of friends, money, &c. so that it hath been the providence of God that hath hitherto supported me. I thank God my confinement was not occasioned either by murder or felony, or any ill thing; but an Irishman, (whom I pray God forgive) swore against me, that, by virtue of bills, I raised money for the use of king James. Now, to make you sensible that I never acted any such thing, and that those things which were laid to my charge, were as false as hell; you may remember, that, during my abode among you, and amidst the worst of times, I was one who stood up for the vindication of the church of England, and altogether against the Roman Catholics; whereas, if I had not a member of the church of England been, then was the time (when authority was on my side) to lift up my head; yet, at the same time, as you can all bear me witness, I stood in the gap against their doctrine and clandestine actions: all which, methinks, is sufficiently demonstrable, that they have laid to my charge things that I know not of; yet for the same a fine was laid upon me, under which I now labour, to the great disquiet of my soul, and the starving of my natural body, which, if not supported, will suddenly (being not able to subsist any longer) be transformed into its first matter. May it therefore please you, and all the virtuous gentlewomen of that college, so far to cast a com-

passionate eye on my most miserable and despicable condition, as to extend your charitable benevolence toward my enlargement here hence, and send it me this week by a trusty hand. The reason why I begg it this week, is because I have employed one to remove me to the King's-bench, where I expect my freedom, and, in the mean time, some employ, whereby to keep soul and body together; but, if continued here, I shal perish out of pure want: therefore I hope you will putt on bowels which are human, and lend your helping hand to a fallen brother. I pray God incline your hearts to do things for God's glory and the good of the church; and I begg leave to remain, your most humble servant, and affectionate brother in the Lord,

ROBERT YOUNG.

My most humble service to you all in general, whom I pray God keep and support now and for ever.

I have lately given me 30s. toward my removal to the King's-bench, but it will cost 4l.

Direct for me at the masters side debtors, in Newgate, London.

For Mrs. Young, or Mrs. Craige,
Widows, or any other Widows
of the College in Bromley, in
Kent.

I am now attending Robert Young in his next stages to St. Albans and Litchfield, where he managed his business for a time without Mary Hutt, and sometime in concert with her, and both times like himself.

The season, indeed, of his coming to, and acting in these places was, of all others, most proper to conceal the impudent knaveries he practised there, and in the parts thereabout, it being towards the latter end of the year 1688, and the beginning of 1689 (the very time when all men's minds were amused with greater matters, and intent upon the revolution of the government, which happened during that interval) for, as it is usually found, that the little mean thieves and pick-purses are wont to have the great harvest in places where there is the greatest bustle and crowd, and where they find most quarrels and frays; so this great rogue could not wish for a fitter occasion to escape unperceived in his cheats, than when there was such an universal combustion in all parts of the nation, and when men were generally more solicitous to save their lives, than their pockets.

And, accordingly, he made use of this opportunity, both at St. Albans and Litchfield, to the best advantage for his designs; so that I find a world of new matter rising up before me, both that city, and that town, and all those countries resounding, to this day, with the noise of his and his pretended wife's forgeries, and other their lewd pranks.

But, out of mere compassion to my reader, and, indeed, weariness in myself, I will reduce, into as narrow a compass as I can, that part of their history, which else, perhaps, would have proved more copious than any of the rest.

It may therefore suffice, that I only give some few undoubted proofs, to justify what I have already affirmed of his behaviour at St. Albans, and at Litchfield. First, here are two letters to give an account of his general conversation at Litchfield; and then several other letters and informations concerning the notorious forgeries, which he practised on Mr. Clark of Northampton, Mr. Mathew of Daventry, and Mr. Olds of Coventry; and also the depositions of Robert Young's own servant, and Mary Young herself at Litchfield; and, lastly, the forged bills and letters of advice by which they accomplished all these cheats.

First, a LETTER to me, concerning Robert Young's life, during his stay at Litchfield, from a Reverend Clergyman of that Cathedral.

My Lord; *Litchfield, July 23, 1692.*

I received this morning your lordship's of the 20th instant, and have here inclosed as much, as the shortness of time would permit, of Young's carriage in this place. I shall be glad, if this may help to clear the innocent, and detect the fraud of villains.

Robert Young, who pretended to be an Irish clergyman, and to have good church preferment in Ireland, and a considerable temporal estate, lived for some time in Litchfield, and lodged with one Moreton, who kept a public house.

During his being here, he was observed to have store of gold and silver, and some plate.

He kept his man and two horses, and rode often abroad, but as many observed, more like a highwayman than a divine. Before he left this place, he went to lodge at a private house, where the gentlewoman's maid was debauched, and, some say, by him.

He made love to a gentleman's daughter in Tamworth, and in all likelihood had married her, if a woman had not come hither, whom he owned to be his wife.

It is said, he would have given his man money to have killed this woman, whom he owned to be his wife; which when the man refused to do, he attempted to kill him.

He was arrested here first for debt, and afterwards for taking bills of exchange out of the mail, and from this prison was removed to Newgate. There is one Mr. Mathew at Daventry, who, as I hear, can give more account of Young's rogueries.

I am your lordship's, &c. L. A.

Secondly, The Substance of a LETTER to sir R. R. from a person of worth and credit at Litchfield, to the same purpose as the former:

Sir; I have made the utmost inquiry I can into Young's behaviour while he was at Litchfield, which was not above a quarter of a year, or thereabouts. When he came first hither, he was very full of money and plate; pretended to be a dean in Ireland, and to have a plentiful estate there, and to have brought the money and

plate thence. So soon as he became a little acquainted, he began to inquire out for a fit person to make him a wife, and presently fell in league with a woman of Tamworth (who was to have 1,000*l.* to her portion) and had prevailed with her to marry him, as he himself boasted; but while it was *in fieri*, there came a woman hither, who said she was his wife, and who doubtless was so; and the villain, as his man reported, would have hired him to have killed her, and upon his refusal endeavoured to kill him. Before he came to Litchfield, it seems he had been for some time at St. Alban's, where, by courting the postmaster's daughter, he obtained the privilege of looking into the packets, and by that means got divers letters into his custody, which had bills for return of money inclosed in them; with which he posted his wife to London, who there received a good part of the money. This we know by the relation of Mr. Olds, a mercer in Coventry, and of another mercer in Daventry, the former of which coming hither and surprising him, while he had money and plate left, got as much in value as satisfied his bill; and the latter being sent hither by him in two or three days after, seized his person, and got him committed to the town gaol, and thence removed him to London, where he was tried, and convicted of these and some other such roguish practices, and pilloried for them.

Sir, I am, &c.

Thirdly, A LETTER to me from Mr. ALLESTREE, minister of Daventry, touching Robert Young's demeanor at Litchfield, and particularly his forging bills of exchange, under the names of Mr. Olds and Mr. Mathew.

My lord; *Daventry, Sept. 20, 1692.*

I have, in obedience to your lordship's desires, inquired concerning the villainies that Robert Young has perpetrated here, and made this place the stage thereof, and I am furnished with such unquestionable intelligence, and such abundance of matter of this kind, that does sufficiently discover the disposition of the man, and the pravity of his mind, that he is prepared by nature, custom, or indigence, for any sort of wickedness: so that knowing certainly the many cheats he has acted here, and in our neighbourhood, without compunction or remorse, it is no wonder to me, that, by degrees, he is risen at last to attempt the life of others, by the trade of forgery, and swearing men into treasonable acts and associations.

About the latter end of the year 1688, we were alarmed with the news of a notorious cheat that had been practised upon Mr. Ship-ton in Friday-street, by a villain who had forged the hand of Mr. justice Mathew, of this town, and copied his letters so exactly, that he himself could not discover the difference by the strokes of the pen, or disown the writing upon view, but only by being conscious to himself that he had never written, or set his hand

to any paper of that moment and importance ; so that Mr. Shipton, who was his correspondent in London, was easily imposed upon by the similitude of hands, and paid two hundred pounds upon a pretended bill drawn upon him from Mr. Mathew. When the following post gave notice of the payment of the money, and also of the order that was followed therein, all endeavours were speedily used to apprehend and discover the impostor, and many journies were undertaken into several countries in pursuit of him ; but all inquiry and search for the detection of the theft, and of the author, were fruitless and unsuccessful, till it happened, after some considerable distance of time, that, the news of this cheat spreading far and wide, one Mr. Olds of Coventry sent word to Mr. Mathew, that he had been formerly cheated of 14*l.* that he had discovered the rogue that had forged his hand, and that he had given him satisfaction for his money. He did not know but this might be the man that had put the like trick upon him in a greater sum, and referred it to his consideration, whether it would be worth his while to go so far as Litchfield for enquiry and satisfaction. It will not be improper in this place, my lord, to trace things from the beginning, and examine how Mr. Olds came by this intelligence, that helped him to the recovery of his money ; the cheat that was put upon him was of an ancient standing, and he had been a long time under the sense of the loss of his money, without any expectation ever to retrieve it. Now this Young, who had practised these rogueries upon him, and divers others, and by these frauds had lined his pockets, with a competent sum, both of gold and silver, repairs to Litchfield in a decent habit ; pretends himself an Irish protestant and refugee, one that was persecuted for righteousness, and had lost all for the sake of the gospel. The dean and prebendaries believe him, and receive him with a great deal of civility, charity, and humanity, permitting him to preach in their several courses, that so their benevolence to him might be greater, and seem like an act of justice, and the discharging of a debt.

In this pomp, with all manner of accommodation, he resides a long time among them at Litchfield, and follows the sports that were suitable to the season, whilst his wife, by his instructions, is carrying on her usual cheats at London. Now having represented himself a batchelor, he made his court to a young woman, and had advanced far in her esteem ; but the detection of his rogueries broke off the intrigue. For, his wife sending him word that she was coming down to him, he went forth one morning with his servant (who carried his gun after him) a shooting, and there proposed to him the killing of her, offering him a great reward for his pains : but the motion being rejected with abhorrence, he threatened to be revenged of him, and cut his throat.

The man, believing his master was very serious in his threatenings, and that he would accomplish his malice, when privacy and night

favoured him, run away from his service ; and knowing the cheat that had been acted upon Mr. Olds, repaired as fast as he was able to Coventry, to give him notice of it ; and he accordingly went down to Litchfield, charged Mr. Young with the forgery, who rather than he would hazard the losing of his credit and his station with the prebends, gave him satisfaction immediately.

And now, my lord, I am arrived at the point of time, which made way for the discovery of Mr. Mathew's cheat ; the account of which I will choose to give you in his own words, and insert in the body of this letter :

' About the latter end of February, 1688, one Mary Young had a bill of nine pounds on Mr. Shipton, which said sum she received the 4th of March following of him, at the Seven Stars in Friday-street. On the 19th, and on the 21st of the said March, both my letters of cash concerns were opened, transcribed, and counterfeited ; and advice given of a two hundred pounds bill, which was also counterfeited ; upon which Mr. Shipton paid to the said Mary Young two hundred pounds the 22nd of March following. Robert Young lay at St. Alban's, as was supposed, and, by corrupting the post-master there, had opportunity of counterfeiting my letters. Some time after, the said Mary Young was taken at the Maidenhead and Three-kings in Cheapside, with a counterfeit bill on Mr. Billers, pretended to be drawn by Mr. Joseph Olds of Coventry. She was then charged with the cheat upon Mr. Shipton, and was committed to Wood-street compter, from whence she removed herself to the King's-bench in Southwark, and when the fire broke out there, made her escape.

' About the 10th of December following I heard of their being at Litchfield, and immediately went down post ; came thither about twelve at night, and in the morning beset the house where Robert Young lodged ; and, after above an hour's search found him in the cellar hidden under a stack of furze. At his first apprehension he owned the cheat, and offered his globes and books for satisfaction ; but they being refused, he denied all. His wife also said, before the magistrate, that was the first time ever he had seen her, though his servant swore that they had lived years together, and that she had born him several children. From Litchfield they were brought to London, and tried the 15th of January, 1689, where, upon full evidence, they were found guilty of cheating and forgery ; and were sentenced to stand in the pillory in Cheapside, and at the Royal Exchange, and fined one hundred marks ; the first day of the term following to stand in the pillory in Westminster, and fined one hundred marks more : his wife the same punishment, but her fine was but twenty marks.'

My lord, I should be very glad, &c. as being your lordship's, &c.

CHARLES ALLESTREE.

Fourthly, A LETTER from Mr. MATHEW, a justice of the peace, confirming the former relation as to his part in it.

Mr. Allestree;

I have given my lord bishop of Rochester as full an account of that rascal Young, as time will permit; but, if required, can get more particulars against him from Northampton and Coventry. I shall be very glad if I can be instrumental to clear my lord from the imputation this villain has laid him under; knowing how ready a great part of the world is to speak evil (especially of their sort) of dignities. Pray when you write to his lordship, assure him that I am his lordship's, &c.

Daventry, Sept. 12, 1692. BENJ. MATHEW.

Fifthly, The INFORMATION of JOSEPH OLDS, of Coventry, Mercer.

The said informant maketh oath, That Mr. Robert Young, the person now present, having cheated and defrauded him of a considerable sum of money (viz. in May or June, 1683, by receipt of 10*l.*, part of a forged bill of exchange of 100*l.*, pretended to be drawn by this deponent upon Mr. John Billers of London; and in August last, by the receipt of 34*l.* 10*s.* surreptitiously received by the said Mr. Young, or order, by intercepting two bills of exchange; one drawn upon Mr. Wootton in the Strand, for 20*l.* and the other upon Joseph Toovey, cheesemonger, for 14*l.* 10*s.*) the said Mr. Olds did take out a Capias out of the court of record in the city of Litchfield, and the said Mr. Young being privy to it, owned the fraud, and made him satisfaction thereof; and drew out a letter or note, importing an order, directed, as this deponent remembers, to his wife, and thereby required her to pay a certain number of pieces of gold, to the value of about 7*l.*; and that the woman now present, Mary Young, did, pursuant thereto, bring the number of pieces of gold, and delivered them to the said Mr. Young, and that the said Mr. Young delivered them to this deponent. This deponent further saith, That Mr. Billers (this deponent's correspondent at London) in his letter to him, informed this deponent, that he had received his letter, or rather a copy of it, with the advice of drawing a bill upon him for payment of 200*l.* at sight, to Sarah Harris, which money he had not paid, but that the person that brought it was secured, and proved to be the same that cheated Mr. Shipton of 200*l.* under the name of Mary Young, or words to that effect.

JOSEPH OLDS.

Capt. apud Civit. Litchfield super

Sacram. præd. Josephi Olds, 9

die Decem. 1689, coram THO. MARSHALL.

WM. MARSHALL.

Sixthly, The EXAMINATION and CONFESSION of Mary the Wife of Robert Young, Clerk, late of Wapping, near the Hermitage-

stairs, at the sign of the Tobacco Press. Taken the 9th day of December, 1689.

City of Litchfield, ss.

The said examinee upon oath saith, That she was married by dean Dixy in Ireland, at county Cavan, to the said Robert Young, about nine years in July last; and that the said Mr. Young then kept a grammar-school there; and saith, that he was beneficed under the bishop of Kilmore's chaplain, Mr. Crew, in Ireland, and had thereby 30*l.* per ann. That she hath had five children by him, and that they are all dead. That she did go, by order from her husband, the said Robert Young, with a bill upon Mr. Richard Shipton, a linen-draper, at the Seven Stars, in Friday-street, London, and drawn in the name of Mr. Mathew of Daventry, for 200*l.*; and did thereupon demand, and receive the said 200*l.* from the said Mr. Shipton, about February, March, or April last; which bill was delivered her by her said husband, and the money to him delivered by her. That her husband told her, he gave the post-master of St. Alban's ten or fifteen guineas to open the packet, and to take out some letters; but the truth of this she knows not, otherwise than by the information of the said Robert Young, her husband. That her husband and she came out of Ireland in May was twelve months; but whether he was, or is in holy orders, she knows not, but believes he is; and says, that her maiden name was Mary Hutt, of county Cavan aforesaid.

MARY YOUNG.

Capt. apud Civit. Litchfield, 3 die

Decem. 1689, coram THO. MARSHALL.

WILL. MARSHALL.

These are true copies of the Information taken upon oath, at the city of Litchfield; before the justices of the peace of the said city, against Robert Young, the day and year above-said; which original informations remain in the custody of me

R. WAKEFIELD,

Oct. 5, 1692. Town-clerk of the said City.

The afore-mentioned Robert Young and his wife, being in the custody of the sheriff of the city and county of Litchfield, were delivered to a messenger especially sent for them, in obedience to a warrant under the hand and seal of the right honourable Charles earl of Shrewsbury, Waterford, and Wexford, then principal secretary of state; bearing date the 16th day of December, 1689, by the then sheriff of the said city, about the 20th of the said month.

Witness my hand, the 5th of Oct. 1693.

R. WAKEFIELD,

Town-clerk of Litchfield.

Seventhly, The INFORMATION of Js. YOUNG, of the City of Litchfield, Vintner.

The said informant maketh oath, That he knows Mr. Robert Young, clerk, now present, and Mary Young now present; and that he believes her to be the said Mr. Robert Young's wife, and hath known them to live at Wapping

a quarter of a year together, and dine together, and lie together; and that they formerly lived together in Dublin; and that she had two children by him there, and he owned her for his wife, and the children to be his; and that since he came over into England, this deponent lived with them in Wapping a quarter of a year; and that the said Mr. Robert Young frequented the post-house in St. Alban's, and that he courted the post-master's daughter; and that he hath heard him say, the ostler at the post-house (called John) brought him up the bags out of the packet, and he opened and took what letters he pleased, and hath sent this deponent, being then his servant, to receive monies upon bills of exchange that he had fetched from St. Alban's; namely, 14*l.* 5*s.* from a cheesemonger, near the Cock, in Aldersgate-street, London, and allowed 5*s.* for the speedy payment of it; and 20*l.* from a man at the Sword and Helmet in the Strand, by another bill, intercepted by Mr. Young as aforesaid; which bill this deponent received by the said Mr. Young's order, and delivered the sum of 20*l.* thereof to him. But this deponent having not delivered the 14*l.* 5*s.* to the said Mr. Young, he searched this deponent, and the said deponent hid nine guineas, but never could find it since; and for that this deponent would not go to London upon a message to the said Mrs. Young, to bring her down into the country, and hang or drown her coming down (for which he offered this deponent 6*l.*) the said Mr. Young, near Cannost-wood, or Weeford-park, charged a gun, and attempted to shoot this deponent; but the gun not going off upon twice cocking, and his own horse starting at the snapping of the gun, this deponent wrested it from his hand, and rode away with it, till he came to Litchfield, and then discharged it, and carried it home to the Talbot in Litchfield.

JAMES YOUNG.

Capt. et jurat. apud Civit. Litchfield,

Dec. 9, 1689, coram THO. MARSHALL.

WM. MARSHALL.

Eighthly, The further EXAMINATION and INFORMATION of JAMES YOUNG; taken at Litchfield aforesaid, the 14th day of December, 1689.

The said James Young confesseth, That he hath heard the afore-mentioned Mr. Robert Young (during the time that he lived with the said Robert Young) confess, that the afore-mentioned Mary Young had received above 500*l.* for him in London within a twelvemonth, by bills of exchange, forged, and surreptitiously obtained by him, namely, 200*l.* from Mr. Ship-ton, and 150*l.* from some other persons, whose names this examine hath now forgot; and that he received 50*l.* himself from a shop-keeper, and several other sums of money, which this informant hath now forgot; and that he blamed this examine for not receiving two other bills, which the said Robert Young would have had this informant to have gone

with, and demanded, and to have received; and then boasted, that he had himself received the 30*l.* above-mentioned, and that he had given the post-mistress's son of St. Alban's 50*l.* by several times, to let him be privy to the post bags and packet, and that he had made use of them on these like occasions all this last summer: and that he went by the name of Robert Kendall, in St. Alban's, and used to be there sometimes a week, sometimes a fortnight together, though his habitation was at Wapping. And says, That when this informant refused to go with the bills, as above-mentioned, the said Robert Young called him fool, and told him, if he were apprehended, it was but standing in the pillory an hour or two; and that it was nothing, he had stood in the pillory himself, and had been imprisoned and laid in bolts at Suffolk for a considerable time.

JAMES YOUNG.

Taken at Litchfield, the 14th day of

Dec. 1689, before THOM. MARSHALL.

These are true copies of the informations taken at the city of Litchfield, before the justices of peace of the said city, against Robert Young, the day and year abovesaid; which original informations remain in the custody of

Oct. 5, 1692.

R. WAKEFIELD,

Town-clerk of the said City.

Ninthly, The true and the false Bills of Exchange, and false Letters of Advice, by which the several Forgeries upon Mr. CLARKE, Mr. MATHEW, and Mr. OLDS, were transacted.

First, The forged Bill to Mr. Kendall, to pay Robert Young 20*l.* under the name of Robert Smith:

Northampton, July 10, 1688.

Mr. Kendall, pray pay one Thirsday next the sume of twenty pounds to Mr. John Philips, or order, for the use of Mr. Robert Smith for like valew hear receivd, and plase to accounte of your reall friend - - - - - £. 20

JOHN CLARKE.

This to Mr. Jonathan Kendall, at the 3 Pigen in Milke-street, London.

The Indorsement.

Received, the 16th of July, 1688, the full contents of this bill, being twenty pounds, I say received - - - - - £. 20

Per ROB. SMITH.

Secondly, The true Bill of Mr. Clarke to Mr. Kendall for the same sum, upon which the first was forged:

Northampton, July 10, 1688.

Mr. Kendall, pray pay one Thirsday next the sume of twenty pounds to Mr. John Philips, or order, for the use of Mr. Robert Smith for like vallew hear receivd, and plase to accounte of your reall friend - - - - - £. 20

JOHN CLARKE.

This for Mr. Jonathan Kendall at the 3 Pigen in Milke-street, London.

The Indorsement.

July 17, 1688.

Paid Mr. Robert Smith the twenty pounds back again at Northampton.

JOHN CLARKE.

Thirdly, The forged Bill from Mr. Clarke to Mr. Kendall, for one hundred fifty pounds, which Mary Young received under the name of Mary Clarke :

Northampton, Oct. 5, 1688.

Mr. Kendall, I pray you pay one Tuesday next to Mrs. Mary Clarke the sume of one hundred and fifty pounds for like vallew hear received, and place to the account of your reall friend - - £. 150

JOHN CLARKE.

To Mr. Jonathan Kendall, at the
3 Pigens in Milke-street, London,

The Indorsement.

Received, the 9th of Octob. 1688,
the full contents of this bill, being one
hundred and fifty pounds, I say re-
ceived - - - - - £. 150

The mark of

MARY | | | CLARKE.

Fourthly, The forged letter of advice from Mr. Clarke to Mr. Kendall, where notice of the one hundred fifty pounds bill is inserted:

Mr. Kendall ;

I am not a little trubled to hear Mr. Ridly has not paid you as yet any moneys ; pray, if you have not yet herd from him, send by the said post, and, if that will not doe, pray let the sume person attend the concern, and what it costs charg to account. Pray also pres for the bill of 5*l.* lent Sr Symon —, also the bill last sent of Mr. Williames for 4*l.* 8*s.* I hope all will suddenly be paid ; the bill of 20*l.* dew to Will. Oldam, as I sent last Monday, is promised to be broyt to your shop in a little time. I pray you send 3 or 4 lines under ritt to marchant Porter, if the bill is not accepted ; but my freind gives me all assurance it will be paid at the time. My lord is a very sweet youth to take up 40*l.* of me in such sort, and now to deall so by me ; he owes me at lest 150*l.* and promised I should have part of that suddenly, and now to serve me thus I take it ill from him, but I will right to him, and I pray you send me down that note he gave me ; if my old lord should know he should deal so by me, he would be very angry. [I have given a bill to Mrs. Clarke for 150*l.* to be paid at sight ; I intreat you to pay when she comes for it.] Also I have given a bill to Mr. Bateman for 40*l.* to be paid alderman Maussion in 6 days after sight, also a bill for 25*l.* to one Mr. Ray in a day or two after, or at sight. I am your reall friend,

JOHN CLARKE.

This for Mr. Jonathan Kendall, at the
3 Pigens in Milke-street, London.

Sir ; Northampton, Oct. 7, 1688.

This is to desire you to send a letter next post to Mr. Swan at Hatson in Essecks 5 miles

from Braintery of whom I had the bill of 100*l.* payable the 14th instant to Mr. Kendall for use of Mr. John Whittorne, for if you should fail my freind Mr. Kendall of the moneys about that time, it might be a great prejudish to me. Sir, I am your freind and sarvant,

JOHN CLARKE.

This for marchant Porter.

Next follows the cheat upon Mr. Mathew and Mr. Shipton, in the same order.

First, A true Bill from Mr. Mathew to Mr. Shipton, to pay Mary Young nine pounds :

Mr. Shipton ; February 21, 1688.

Paye at sight of this my bill to Mrs. Mary Young, or to her assines, nine pounds for the same summ received at the Wheat-sheaf at Dentrey, bey your freind and sarvant,

JONATHAN MATHEW.

At the 7 Stares in Friday-street : This.

The Indorsement.

Received, the 4th of March, 1688,
nine pounds in full of this bill - - - £. 9
Per MARY YOUNG.

Secondly, The forged Bill for two hundred pounds, payable to Mary Young :

Mr. Shipton ; March 18, 1688.

Paye at sight of this my bill to Mrs. Mary Young, or to her assines, 200*l.* for the same summ received of her at the Wheat-sheafe at Dentry, by your freind and sarvant,

JONATHAN MATHEW.

At the 7 Stares in Friday-Street : This.

The Indorsement.

Received, the 21st of March, 1688,
two hundred pound in full of this bill, £. 200
Per MARY YOUNG.

Thirdly, The forged Letter of Advice, in which notice of the two hundred pounds is inserted :

Sir ; I have drawne a bill on you to pay Mr. Sam. Bird, or order, 30*l.* [and a bill likewise on you to pay Mrs. Mary Young 200*l.* which pray pay her on demand.] Mr. Woodward will pay you 200*l.* at least this week or the next following. Mr. Campion for Dev. Wall 100 and od pounds for your humble sarvant,

Daintry, March 9, 1688. BENJ. MATHEW.
To Mr. Richard Shipton at the
7 Stares in Friday-street, London.

Fourthly, A true Letter of Mr. Mathew, in the postscript whereof forged notice is given of the two hundred pounds bill :

Sir ; Be pleased to pay to William Peytue, esq. or order, 66*l.* and place 7*l.* 10*s.* to accompt of Thomas Lucas, that I have received of him for your use ; who am your humble servant,
BENJ. MATHEW.

I hope you have paid Mrs. Mary Young 200*l.* and Mr. Sam. Bird 30*l.*

Daintry, March 21, 1688.

Fifthly, Mr. Mathew's letter to Mr. Shipton, upon notice of the cheat:

Mr. Shipton;

I have just now received a letter from you, wherein you say you have paid 200*l.* to Mary Young. I never received any such summ, nor drew any such bill, therefore have sent Tom away post to let you know it, that if possible you might retrieve it. Your servant,

BENJ. MATHEW.

My father saith he never drew any such bill, and Tom will satisfy you he hath not.

Daintrey, 8 of the clock Friday night.

Sixthly, Mary Young's Letter to Mr. Mathew, after she cheated him of two hundred pounds:

Sir; This is to give you notice, that I have borrowed on your credit from Mr. Shipton 200 ponds, and when I am able I will pay you again. The way I got your letter out of the Post-office in London, was by seeing one of the men that carried the letters about: and by that letter of advice I procured another to be write, so that you need not trouble yourself any more. I rest, M. YOUNG alias BROWN, alias STEWART, alias FORBUS, alias BONER, &c.

For Mr. Jonathan Mathew at Daintrey, near Coventary.

These at the Wheat-sheafe.

Lastly, Here are the cheats upon Mr. Olds and Mr. Billers, all but the bill of 20*l.* which I have not seen.

First, The forged Bill of 100*l.* from Mr. Olds to Mr. Billers, June 12, 1683, whereof Robert Young only got 10*l.*

Coventry, June 12, 1683.

Brother Billers; At sight of my bill bearing date June 12, be pleased to pay unto Mr. Robert Young the sume of a hundred pounds, which I have received from him. I have nothing els at present, but this letter of advice from him, who is your loving brother and servant,

JOSEPH OLDS.

To Mr. Billers, at the Three Kings in Cheapside, London.

June 13th, 1683.

Received from Mr. John Billers the sume of ten pounds. Sir, I say received by me.

ROBERT YOUNG.

Secondly, A true Bill of Samuel Croxal, upon Joseph Young to John Billers, for use of Mr. Olds for 14*l.* 10*s.* Aug. 5, 1689. But received by Robert Young's man, upon account of a forged indorsement:

The 5th of Aug. 1689.

Friend Joseph Young;

At site of this my bill, or ten days after, I pray pay to John Billers, or order, the sume of fourteen pounds ten shillings, for the use of Joseph Olds: make good payment, and plase it to the accompt of thy friend,

SAM. CROXAL.

At Long-lane End, in Aldersgate-streate, London.

VOL. XII.

Indorsed thus,

Pray pay to my man, James Mooreten, the within bill. As witness my hand, Aug. 14, 1689.

JOHN BILLERS.

Received, the 14th August —89, fourteen pounds ten shillings, being the full contents of this bill for my

Mr. John Billers - - - - - £. 14 10

Per JAMES MORTON.

Thirdly, A true Bill of Mr. Olds, for 10*l.* to Mr. Billers, Feb. 21, 1688, for Sarah Harris:

For £. 10 *Coventry, Feb. 21, 1688.*

At sight pray pay unto Mrs. Sarah Harris, the summe of ten pounds, value received of her as per advice from your loving brother and servant,

JOSEPH OLDS.

To Mr. John and Benj. Billers, at the 3 Kings in Cheapside, London.

The Indorsement.

Received February 28th, 1688-9, ten pounds in full of this bill.

Per S. H. HARRIS (her mark.)

Fourthly, A false Bill for 200*l.* from Mr. Olds, Aug. 10, 1689, by which Sarah Harris, alias Mary Young, was discovered:

For £. 200 *Coventry, Aug. 10, 1689.*

At sight, pray pay unto Mrs. Sarah Harris the summe of two hundred pounds value, received of her as per advice from your loving brother and servant,

JOSEPH OLDS.

5thly, A false Letter from Mr. Olds, wherein advice of the 200*l.* bill is inserted. Aug. 11, —89.

Loving brother;

Your's of the 6th instant received—and mind the contents.—My dear wife is but poorly, and much as was when at Coventry; she does continue using the means went for; the Lord sanctify them for her good. Pray accept and pay my 200*l.* bill at sight to Mrs. Sarah Harris, or order, No. 78, value of herself. Mr. Watson does not as yet accept the 15*l.* bill; says must first write to London, where has money lays, and if can get it paid there, shall know next week, with kind respects and service to you and my sister. Rest, in some hast, yours,

For Mr. Benj. Billers, at the 3 Kings in Cheapside. *Coventry, Aug. 11, 1689.*

JOSEPH OLDS.

Perhaps, my Reader may wonder why I have been so accurate in setting down at large all these true and forged bills of exchange, and letters of advice. But the reason is, I have had for some time, and have now at this present all the originals of them in my keeping: I have shewn them to very many persons of great sagacity, both of the nobility and clergy, both of scholars and merchants: and after an exact view and comparison of them distinctly, line by line, word by word, letter by letter, I must say, all that have seen them were

strangely astonished at the surprising similitude between the false writings and the true: and they have done Robert Young this justice, as to pronounce them all to be great master-pieces of forgery.

For my part I will only add, that since he could perform all this only with two hands, how many names soever he had, most certainly we would have been to all the citizens and traders of England by false bills of exchange; woe to all the noblemen, bishops, and gentlemen, by false plots and associations, if once Robert Young could have had his wish, and been another Briareus with an hundred hands, which I assure my reader is no flight of mine, but his own in his letter from Bury to archbishop Sancroft.

My Reader having, by this time, found that Robert Young had so often deserved Newgate, will now, I suppose, be glad to see him brought thither to his own home.

But first (according to the course of my method) I must shew that he was sent for up from Litchfield, for treasonable practices against the government, which was done by this following warrant from the earl of Shrewsbury.

Charles Earl of Shrewsbury, Waterford, and Wexford, &c. one of the Lords of his Majesty's most Hon. Privy Council, and principal Secretary of State.

'These are, in his majesty's name, to authorise and require you (taking a constable to your assistance) to search for, seize, and apprehend the persons of Robert Young, Mary Young, and James Young, for dangerous and treasonable practices against the government, and them to bring before me, to answer to such matters as shall on his majesty's behalf be objected against them: and for so doing this shall be your warrant. And herein all mayors, justices of the peace, constables, and other his majesty's officers civil and military, are to be assisting to you. Given at the court at Whitehall the 16th day of December, 1689.'

SHREWSBURY.

'To Henry Legat, one of the Messengers of his Majesty's Chamber in Ordinary.'

Robert Young and James Young, } Left in custody the 30th of December, 89, by Mr. Legat.

By virtue of this warrant we find Mr. Legat, the messenger, brought Robert from the gaol at Litchfield to the gate-house in Westminster; whither, as soon as he came to town, he procured his prisoner to be removed: for, being more cautious than some other messengers since, he would not charge himself with the safe keeping of so dangerous a guest, as he soon perceived him to be.

By the way, Mr. Legat himself has told me of one passage, in their journey up, which I believe my Reader will thank him for. It is, that Robert Young desired him to stop and

call at a little alehouse upon the road, where they found a very old mean fellow, who (as Robert declared) was his father; and, which is yet more strange, the old fellow owned him to be his son.

And, since that time, Mr. Legat, being in Ireland, met by chance the same old man in the streets of Limerick, after it was delivered up to the English. Whereupon, taking acquaintance again with him, by enquiry, he found that he went about in that country, getting a poor livelihood by professing himself to be a fortune-teller and a conjuror. So that thus far we have a pretty account of Robert Young's genealogy, down from the duke of Lenox to the Irish conjuror.

From the Gate-house (as I have already said) he was removed by the lord chief justice's order to Newgate: where, if my reader and I myself were not quite tired with him, I have plenty of instances to prove that he was always the same. One I will give:

During his being prisoner there, whilst none questioned but he was in holy orders, he clandestinely married a fellow gaol-bird of his to a young heiress. For which vile fact, so esteemed even in Newgate, being more severely treated than before, he wrote captain Richardson a letter under his own hand, which I have seen; wherein he tries to excuse himself for so great a crime by an argument that is somewhat singular, and may be reckoned as one of his most ingenious shifts.

It is to this sense, 'Do not you (says he) noble captain, allow any artificer and handicraftsman, that you have here in prison, to work at his own trade, to keep himself from starving? And why then should I be denied to get bread for me, and my wife, by making use of my function?'

But, to return to that which is more pertinent to my purpose, in Newgate Robert and Mary were kept, till they were tried, and condemned, for the forgeries above-mentioned; as the records here ensuing will shew, though I produce but one a-piece for each of them, for brevity's sake.

London. ss. 'Deliber. Gaol. Domin. regis et regin. de Newgate tent. pro civitat. Lond. apud Justice-hall in le Old Bayly, London. die Mercur. (scilt.) 5 decimo die Januarii An. regni Dom. nost. Will. et Mar. nunc regis et regin. Angliæ, &c. primo.'

'Robert Young*, alias Smith, fin. cent. et committitur, &c. et ponatur stare, in et sup. pillor. uno die Cornhill prope Excambium London. et al. in die Cheapside, London. ab hora undecima ante merid. usq; hor. prim. post merid. in utroq; eorund. separat. dier. cum papir. script. supra caput su. ostens. of-

* For cheating Mr. Kendal of 20*l.* by a counterfeit bill of exchange, by him forged in the name of Mr. Clark.

‘fens. ejus, et tunc reducatur ad Newgate in
‘ea salv. custod. quosq; fin. su. prædict. sol-
‘verit.’

‘Mary Young *, fin. xx et committitur, &c.
‘et ponatur stare sup. sedile ante et prope pil-
‘lor. uno die in Cornhill prope Excambium
‘London. et al. die in Cheapside, London. ab
‘hor. undecima ante merid. usq; hor. prim.
‘post merid. in utroq; eorund. separat. dier.
‘cum papir. script. supra caput su. ostens. of-
‘fens. ejus, et tunc reducatur ad Newgate in
‘ea salv. custod. quousq; fin. su. solverit.’

Thus Robert Young and his wife again pass-
ed their well-known road of the pillory. But
being brought back to Newgate for want of
paying their fines; to enable them thereunto,
he fell at last upon this damnable contrivance
of an association, as the consummation of all
his villainies.

I have already told by what means he came
to be so skilful in archbishop Sancroft’s hand,
and mine; how he got a pattern whereby to
forge my lord Cornbury’s, his lordship cannot
remember. But my lord Salisbury’s, and my
lord Marlborough’s, he obtained partly by the
same craft as he did mine: that is, by writing
to my lord Marlborough under his true name
of Robert Young, to my lord Salisbury, under
the name of Robert Yates, to inquire of the
character of some servants they never had: to
which false letters they also unawares returned
true answers, under their own hands; which
he thereupon falsified.

In the same manner he procured sir Basil
Firebrace’s hand, by sending him a civil letter,
under the feigned name of Robert Yarnier, a
justice of peace at Marlow in Buckingham-
shire, and earnestly recommending to him a
wild son of his for an apprentice; professing
he would not stick at any money, if sir Basil
would take him under his care; withal ‘de-
‘siring an answer from him under his hand by
‘the bearer, his man;’ which he had; and
thereupon sir Basil was entered into the Associ-
ation.

But, lest my reader should think that the
single framing of one Association was employ-
ment enough in matters of state, for so fertile a
brain, and so artificial a hand as Robert
Young’s, during the whole two years and four
months that he lay prisoner in Newgate, I
have one story more to tell of him, and then I
shall have done: as indeed I well may; for
after this Association, and this other story of the
like nature I am going to relate, I think it may
justly be concluded, that scarce ever any mortal
man has reached to a deeper pitch of infernal
wickedness.

The story is this: shortly after my being
cleared at Whitehall, I went to Lambeth, to
visit my ancient most honoured friend, my
lord archbishop of Canterbury, and to thank

him for the very kind offices he had done me at
court during my affliction. That being over,
I told him I was going to my lord Nottingham
to request, that my two false witnesses might
be brought to trial, and undergo the justice of
the government. His grace encouraged me to
do so, and withal bid me tell my lord Notting-
ham, as from himself, this story, which I will
set down, as near as I can remember, in his
own words: “Near six months ago, about
Christmas last, says my lord archbishop I
received a letter from this Robert Young out of
Newgate, to let me know there was a pernicious
plot going on against their majesties,
which was laid as deep as hell; and he had
had the good luck to discover it; desiring me
speedily to acquaint the king with it. At first,
the information coming from such a place, I
took little notice of it. But he shortly wrote
me other letters to the same purpose; and at
last sent me letters full of treason, pretended
to be written by some of the greatest men in
England. The hands I did not know; but
then I thought it concerned me, as a privy
counsellor, to acquaint his majesty with the
whole matter. I did so. The king read over
Young’s letters to me, and those treasonable
ones that he had sent me; and then his ma-
jesty very generously said, Really, my lord,
these papers may resemble some of these
persons hands, but I do not in the least distrust
them; I am confident they are innocent, and
this is a villainy; and therefore I will not have
them disturbed upon this account. And so,
said my lord archbishop, I carried home my
bundle of intelligence again, and, sealing the
papers, laid them up in my closet, where they
still remain; and I pray tell my lord Notting-
ham, that, when their majesties shall com-
mand, I am ready to produce them, with the
very inscription I put upon them at that same
time: Letters and papers from Robert Young,
who is a very rogue.”

And here indeed I had resolved to give the
rogue over: but, when I was just concluding,
there happened a new discovery, relating still
to my share in this business; so very remark-
able that I cannot, without manifest injury to
myself and my reader, deprive him of the
knowledge of it: I mean Robert Young’s fresh
attempt to suborn one Holland, in order to re-
vive the fallen credit of his forged Association.

I should be very loth, by what I am going to
say, to forestall or misreport the king’s evidence
against him; but the reality of this gross sub-
ornation having been sworn to at Hicks’s hall,
where I myself was an ear witness, as well as
many worthy gentlemen, and great numbers
of other persons, I know not how it were pos-
sible for me to make a secret of it if I would:
and the story so much conducing to shew the
extreme madness and implacable rage of the
villain, when he was brought to his last shifts,
I think I have great obligation upon me to
make it public.

Now the evidence in this matter, consisting
partly in the discourse Young himself had

* For cheating Mr. Shipton of 200*l*. by a
counterfeit bill of exchange, in the name of
Mr. Mathew.

with Holland, to draw him in to be a perjured witness in this profligate cause ; and partly in the instructions Young sent him in writing to swear by. I will set down, as near as I can, a very brief but faithful abstract of the substance of both ; it being to both that Holland publicly took his oath. And to the truth of the instructions, being written in Young's own hand, Mr. Aaron Smith also swore at the same time, and unquestionably proved it, by comparing that paper with a whole handful of letters he had received from Young himself out of Newgate.

It seems then, that during the long time of Young's being in Newgate, he became acquainted with one Holland, a prisoner likewise there: Young for forgery, Holland for debt.

Some time after Blackhead had confessed before the lords of the council, Young sent for this Holland to the messenger's house, where he lay confined ; and knowing him to be very poor, and thence judging, by himself, that he was the more likely to embrace any wicked design, broke the business to him in this manner.

Mr. Holland, says he, it is most certain there is a hellish plot against the government: the story you may have heard of the Association, is true to a tittle: I should have clearly made it out, had not the cowardly rogue Blackhead forsaken me, being bribed by the bishop of Rochester, and frightened by some great men at court, who are also themselves as deeply engaged in the design. Now, if you will come in to assist me in the proof of it, we shall be made for ever ; I shall have 1,000*l.* (so the lying knave boasted) and you shall have half of it. And I think, Mr. Holland, 500*l.* will do no hurt to a man in your circumstances.

By my faith you say true, Mr. Young, replied Holland, such a sum would come very seasonably to me at this time. But what work am I to do for it ?

It shall be only your part, answered Young, to swear, that you saw the earl of Salisbury, the earl of Marlborough, and the bishop of Rochester, sign the Association.

But, said Holland, how can I make a probable story of it ? seeing I never saw the Association, I know none of the three lords you speak of, nor can I imagine where to fix the place or time of signing it, or any of the other necessary circumstances.

As for all that, said Young, I will send you instructions by my wife, of the particulars you are to swear to. For, Mr. Holland, I would not have you come hither yourself often to me. I have here divers spies upon me : and besides, this damned Blackhead, who has deserted me, lies just over head, in this same messenger's house.

But, as for the Association itself, I will now describe you the exact shape of it. Then, calling for a sheet of paper, he folded it into the same fashion : only, says he, you must remember that the Association is written in great thick paper.

Next, he repeated to him the heads and principal matter of it ; then shewed him in what order the names were subscribed. Here, says he, is the late archbishop of Caunterbury's hand uppermost, towards the right side ; next under that, the bishop of Rochester's. Under his the lord Cornbury's : over against the bishop of Rochester's to the left, is first the earl Salisbury's, then still to the left the earl of Marlborough's, and so of the rest ; pointing to the place of every particular name very expertly.

I also well remember, that, in the instructions, there was a list of several other names, that were not in the original forged Association ; which no doubt, were put in towards the forming of more new false Associations ; as, before I intimated, most certainly was his intention, if this had gained credit.

But for the persons, added Young, you must get a view of them as soon as you can. And (as far as I can recollect, all that follows was in his paper of written instructions) the earl of Salisbury, when in town, is at his house in the Strand ; when in the country, at Hatfield in Hertfordshire, beyond Barnet. The earl of Marlborough is so well known about Whitehall and St. James's, that you will easily find where he dwells. The bishop of Rochester is to be seen either at his house at Bromley in Kent, or at Westminster, where he is dean.

And as for the place, and time, and company ; you must swear, that you saw these three lords on such a day (mentioning a particular day which I have forgot) come to the Lobster alehouse in Southwark : that they came in white camblet clokes, with cravats about their necks : that the sign was, their inquiring for the number Three : that then they were conducted up stairs into a back room ; and there, in the presence of you and me, and captain Lawe (I think also he named one or two more) they signed the association : then, delivering it to captain Lawe, they said, Captain, we pray, make haste about to get this paper speedily subscribed by the rest, who you know are concerned ; and that then these three lords threw down their twelve-pence a-piece, and so went their ways.

I know my reader, upon sight of all this strange stuff, cannot forbear smiling : which, perhaps, it is not decent for me to make him do, so near the end of this tragedy.

But it is none of my fault : I only, as near as I am able, relate the simple truth. Most certainly it was sworn, that Holland communicated all this to the secretary of state : and, being examined by some lords of the council, affirmed it all upon oath : and I am sure, that, upon oath also, he repeated it all before the justices of the sessions, and the grand jury of Middlesex, on the day that the bill of forgery, and subornation of perjury, was found against Blackhead and Young.

And besides, that which to me confirms the truth of Holland's testimony beyond contradiction, is, that every word of the instructions was undeniably written by Young's own hand ;

which, by this time, I hope my reader will take me to be a competent judge of.

For, since I began my knowledge of him, on the 13th of June last, I have seen so very many papers of his own hand-writing, (I mean his true hand, not his false) that now I may presume to say, I think myself as well-skilled in knowing his hand, as he is in counterfeiting mine.

I cannot therefore see how he can possibly be excused from ridiculous folly, as well as shameless subornation, in this last so very subtle an intrigue.

I must therefore, upon this occasion, crave his leave to apply one certain general observation to Robert Young in particular, that there was never yet a very great knave, but he proved, some time or other, as great a fool.

I have now, in good earnest, done with Robert Young. But, when I reflect on what I have been doing all this while, I am almost out of countenance at it. It vexes me, that whilst my happy deliverance might have suggested to me so many better and more useful thoughts, both in regard to the public, and my own private part in it, I should be so long diverted another way, to follow this impious wretch through one kingdom to another, from gaol to gaol, from pillory to pillory.

Nor could I have submitted to so mean a task, had not some good and great men thought it necessary not so much for my own vindication, much less for my own revenge, the thoughts of which are far below me as a Christian, and a bishop; as for the security of other innocent persons: and that this might be some warning to my country, in time to come, against the like wicked forgeries, subornations, and false plots.

It is indeed somewhat strange, that when the laws of England are so watchful and jealous (perhaps more than the laws of any other kingdom) in defending the liberties and properties of the subject from all injustice, fraud, and oppression; yet they may seem not to have been equally careful, not so much as the laws of most of our neighbouring nations, in providing severely enough against that worst sort of perjury, which reaches to the taking away of mens' lives.

For my part, I can assign no other reason of this defect, but the same for which the Romans had for some ages no laws against parricides; that is, that the ancient simplicity and generosity of the English nation did never imagine any Englishmen could possibly be guilty of such diabolical wickedness, as to turn accusers for the sake of accusing, and in cold blood, by perjury to destroy innocent men, to whom they were utter strangers, and who had never in the least provoked them.

I am inclined to believe, that this was the cause why our country has been hitherto deficient in laws of this kind, at least since the conquest.

But if we consider the different degrees of the offences themselves, how can it possibly be

thought a crime of the same magnitude, to swear a man falsely out of a part (a small part perhaps) of his goods and estate, as to swear him falsely out of his life, his honour, his very name, as well as his whole estate; as in the case of high treason? Yet, by all our laws now in being, if I am not misinformed, the penalties of these greatest of perjuries are not much heavier than those which are inflicted for the least.

And what temptation must this be to forswearers, in matters of state especially, when the reward is like to be considerable, if they carry their point so far as to have their false plots believed to be real; and on the other hand, the penalties cannot by law be very grievous, should they be detected of swearing to plots most impudently false? Especially considering, that such infamous persons, knowing they are safe from extraordinary punishment, particularly from punishment by death, have usually no great dread of the shame, or pain of the ordinary ones, such as pillorying and the like; as having, perhaps, been often inured to them before.

To prove what I say, I need alledge no other example but this of Robert Young. My reader finds he has stood in the pillory more than once for several petty forgeries: petty I call them, only in comparison to this. And what a mighty business were it now, if for contriving the final ruin of so many guiltless persons, and their posterity, by the basest means, Robert Young should be adjudged once more to stand in the pillory?

Or what would it have availed me, or my family, in this world at least, should I have died, as guilty of treason, by this villain's false testimony, if afterwards, upon the detection of his perjury (as I am persuaded God would not have suffered so horrid a villainy to prosper, or remain long undiscovered) I say, what great comfort or compensation had it been to my family, and my friends, if, after my unjust execution, they had heard that the wicked author of it had stood once more in the pillory, and perhaps lost the tip of his ear?

Wherefore may it not well become the prudence of our lawgivers, upon occasion of so notorious an instance, together with some others within our memories, to review, once for all, the laws now in force against forgery and perjury? And then to adjust the distinct punishments a little more proportionably to the different guilt, and the several degrees of these crimes; for the future, I mean: God forbid I should propose, that any such law should have a retrospect, even upon Blackhead or Young.

But I presume to urge this the rather, at this time, because of the common saying, 'That ill manners make good laws;' that is, as I understand the proverb, they render the making of them to be necessary. And if this be true, perhaps there was never yet any one age, since the English were a nation, when the ill manners of false witnesses, their frequent subornations, perjuries, and forgeries, have more de-

served to be restrained by some good new laws, than this very age wherein we live.

I could heartily wish so great a benefit might accrue to the public, by the happy discovery of this inhuman design, so as to deter ill men from attempting any more such; then I should think my own troubles more than enough recompensed, I should even rejoice in the extreme peril, to which I myself was thereby exposed.

But however that shall happen, I am sure there is another use of this signal providence, which, by God's grace, it is in my own power to make, and if I do not, I ought to be esteemed as the most ungrateful of men to the heavenly goodness; that is, if I do not render it the chief business of my whole life to return some suitable thanks to Heaven for it.

I hope I may say, without vanity, that perhaps it is hard to meet, in some whole ages, with many examples, wherein the divine favour has snatched any private person out of such imminent danger, with a more visible hand than it has done me out of this.

Why may I not be allowed, in all humility, to say thus much? since it is so manifest, that the destruction or preservation of me and mine, did depend upon the clerk of the council's turning to the right hand, or to the left, when he entered to search my house at Bromley.

By God's mercy and direction he turned to the left; there examined all places so curiously, as to pass by no corner unobserved, yet he found nothing on that side worthy the observation of one that came on such an errand.

Whereas, had he chanced to turn, chanced did I say? I cannot believe that any thing fell out by chance in this whole business; but had God permitted him to turn on the right hand, the first room he had entered was that very parlour, wherein was deposited the fatal instrument of my death; nor could he have missed it, but must have immediately lighted upon it, considering the punctual instructions he had received, to search all the chimnies, and the flower-pots in them.

And, had he once found it, the writing itself, so nearly resembling my own hand, and taken in my dwelling-house, had soon overwhelmed me with supposed guilt, without any further need of Blackhead's, or Young's assistance.

For, in so great a surprize, and consciousness of my own innocency, whom had I to accuse, or suspect, but only Mr. Dyve and Mr. Knight themselves, for having put the Association into the same flower-pot, whence I had seen them take it out? And this, indeed, had been another aggravation of my misfortune, that I should have been forced to impute so vile a treachery to persons as innocent in this, as I myself was in the Association.

Moreover, let my reader but recollect the particular time when all this happened, and I need mention no other proof, or circumstance, of the marvellous greatness of my danger and escape.

It was in the beginning of May last, a time

when perhaps there was as great a consternation, both in town and country, as was ever known in England; the English fleet was scarce yet out of the river; the Dutch, for the most part, at home; the French in the mouth of the channel, and only kept back by contrary winds; a terrible invasion hourly expected from France; the army beyond sea, that should have defended us; a real plot and confederacy by many whispered about, by the common people believed; many persons of great quality imprisoned upon that suspicion; all mens' minds prepared to hear of some sudden rising or discovery.

In such a critical time of public terror and distraction, how very little evidence would have sufficed to ruin any man, that had been accused with the least probability of truth? And how then had it been possible for me to have stood the torrent of common fame and passion against so great a notoriety of fact, had that paper of a pretended Association been really found in my house?

What tumult and rage had been on all sides of me, upon such a discovery! How fitly had such a story served to inflame the generality of men against me! How long a time must it have been, before the still voice of innocency could be heard!

Would it not have been said, 'Can he deny it to be his own hand? Are not the hands of the rest well known? Was it not found in his house? In so secret a place there? Who could have laid it there but himself?' This certainly had been the universal clamour.

But, above all, what a mischievous advantage had this given to the enemies of the church of England, to insult and triumph over it on my account! And that, in truth, had more sensibly and deeply wounded me, than any thing else which could have befallen myself.

But God prevented all this, by covering, if I may so say, the hand-writing against me in my chimney, as long as the finding of it there might have been to my destruction; and then, by suffering my accusers to fetch it thence, and produce it in such a time, and in such a way, as could only tend to their own confusion.

To God, therefore, my only deliverer, be the praise: and, as I doubt not, but all good and innocent men, for the common sake of innocency vindicated, will receive this account of my deliverance with kindness and good-will, so I do most solemnly oblige myself, and all mine, to keep the grateful remembrance of it perpetual and sacred.

THO. ROFFEN.

Blackhead and Young were afterwards tried and convicted for this forgery; and in the year 1700, Young was executed at Tyburn for coining, and at the gallows delivered the following Speech to the reverend Mr. Allen the Ordinary.

A True Copy of the PAPER delivered by ROBERT YOUNG to the reverend Mr. Allen, Ordinary, at Tyburn, on the 19th of April, 1700.

Published by Permission of Authority.

I cannot but be very sensible, how justly I have provoked a most merciful and just God to anger, by manifold offences I have committed, and therefore, for the necessary discouragement of others, who shall endeavour to tread in my steps, and parallel my forgeries; I conceived it a duty incumbent on me, to leave to the world a true and faithful narrative of my prevaricating steps: but the shortness of time allotted me, being not sufficient to furnish such a work in, I will mention only these few passages of my life.

And, first, I think myself especially obliged to discover to the public, how far I was concerned in that pretended Plot, supposed to be carried on by the earls of Marlborough and Salisbury, the lord bishop of Rochester, and some others; the truth of which, I call God to witness, is as follows: I was committed to Newgate, 'till I discharged a certain fine imposed on me; during my confinement, one Henry Pearson, a surgeon, I think, was committed to the same place for debt, he perceiving me to be very expert in counterfeiting hands, told me, that if I could contrive a sham plot, and father it upon those noble peers, I might soon have money enough to pay my fine: being in very low circumstances, I readily consented to this proposal, but told him, nothing could be done in that matter, 'till he was released, which in a short time was effected. As soon as he was at liberty, he employed one Blackhead to carry letters between us. I happened, by a certain stratagem, to see the earl of Marlborough's hand; this I counterfeited so cunningly, that it was very difficult to discern the true from the false; then I drew up an Association, and affixed to it the hands of the earls of Marlborough and Salisbury, as also sir Basil Firebrass's; the lord bishop of Rochester's, and the lord Cornbury's was wrote by another hand, according to my request. And that the more credit might be given to this pretended plot, I wrote several letters in the name of the lord Marlborough (for I was perfectly acquainted with his way of writing), supposed to be directed to me, which Blackhead used to bring me again; and yet he swore before the Lords of the council, that the said earl sent them to me; whereas, to his knowledge, I myself forged them, and ordered them to be sent after that manner. This is the truth of that business, which has made so great a noise in the world; and humbly beg the pardon of those noble peers, and do declare once more, in the presence of God, that I did not set the bishop of Rochester's or the lord Cornbury's hand to the said paper, yet it was done by my

consent, by another person. And whereas I am accused with writing several threatening letters to the said lord bishop, if he did not leave 100*l.* in a certain place; I declare as I am a dying man, I was not concerned in it. As for this crime of coining, for which I die, I declare before God, I am no otherwise guilty than by being a spectator.

But though I am not guilty of this fact, yet I must lay my hand upon my mouth, and confess that the Lord is righteous, and his judgments upright, for I have injured my neighbour so often by forgeries, cheats, &c. that I think it scarce possible to recount them. But that I may not totally omit them neither: in the year 1695, I removed myself, by Habeas Corpus, from the King's bench to the Fleet, where I came acquainted with Mr. Hunter, now living in Billiter-lane, Mr. George Alliver, alias Block, Mr. Dawson, Mr. Greenfield, Mr. Coin, and others whom I have forgot. In the end, we concluded to cheat one Mr. Thomas Lasenby, of Leeds in Yorkshire, out of cloth, to the value of 135*l.* which accordingly was effected, and the cloth delivered at the Bear-Inn in Basinghall-street. In the year 97, I was, by the warden of the Fleet, removed back again to the King's-bench, where I came acquainted with Mr. John Carey, George Benson, and James Roberts, and by false bills of Exchange, and forged letters, endeavoured to cheat Mr. Seth Lofthouse, a goldsmith in Fleet-street, and Peter Block Mochiels, a merchant in Amsterdam, out of 1,600*l.* but that failed, though Carey was pilloried for it. In the aforesaid year 97, I came acquainted likewise with one Mr. John Griffin of Tuttle-street, Westminster, and by forged leases, as under one Dr. Thomas Lamplugh's hand, I have cheated men in town out of several hundred pounds by way of mortgages. Sir John Johnson, an alderman and goldsmith in Cheapside, since deceased, very narrowly escaped of being cheated out of 200*l.* by virtue of one of the aforementioned leases.

In the year 1698, the aforesaid persons, and I, cheated Mr. Azariah Reynolds, an undertaker in Cheapside, of a velvet pall, two cloaks, &c. by a forged letter, as from his correspondent in the country, for which I was committed to Newgate, and fined 200 marks at Guildhall, where I received my trial, and was convicted.

In Newgate, I came acquainted with Jones, the evidence, whom I saw coin in the debtor's hall, several sums of money. How far I was concerned with him, I have already observed; but I forgive them, and do humbly beg God, and the persons I have wronged, to forgive me those wicked actions I have committed. Into thy hands, O God, I commend my spirit! Lord Jesus, receive the soul of the unhappy and miserable

ROBERT YOUNG.

This is a true copy dated April 20, 1700.

JOHN ALLEN, Ordinary.

373. Proceedings against CHARLES KNOWLES or KNOLLYS,* esq.
(commonly called Earl of Banbury) for the Murder of Philip
Lawson, gent.†: 4 & 5 W. & M. A. D. 1692—1693.

THE INDICTMENT.

REX ver. KNOWLES, alias Com' BANBURY.

Midd' ss. ALIAS scilt' die Mercur' scilt' 7 die Septembris anno regni domini et domine nostror' Guliel' et Marie Dei gra' Angl' &c. regis et regine fidei defensor' &c. quarto ad general' session' pacis domini regis et domine regine tent' p' adjournament' p' com' Midd' apud Hicks'-hall in St. John-street in com' pred' coram Carolo Lee Mil' Lanceloto Johnson et al' sociis suis justic' dictor' domini regis et domine regine ad pacem in com' pred' conservand' necnon ad diversas felon' transgr' et al' malefacta in eodem com' p'petrat' audiend' et terminand' assign' per sacr'um duodecim jur' probor' et legalium hom' com' pred' ad tunc et ibid' jurat' et onerat' ad inquirend' p' dictis domino rege et domina regina et corpore com' predict' presentat' existit quod Carolus Knowles, nup' de paroch' Sancti Egidii in Campis in com' Midd' ar' Deum pre oculis suis non habens sed instigatione diabolica mot' et seduct' 6 Decembris anno regni domini et domine nostror' Guliel' et Marie Dei gra' Angl' &c. regis et regine fidei defensor', &c. 4. vi et armis, &c. apud paroch' pred' in com' pred' in et sup' quendam Philippum Lawson gen' in pace Dei et dict' dom' regis et domine regine nunc ad tunc et ibidem existen' felonice voluntarie et ex malitia sua precogitat' insult' fecit et quod pred' Carolus Knowles cum quodam gladio (Anglice 'a sword') de ferro et chalybe confect' valor' quinq; solid' quem ipse idem C. K. in manu

* The question of the legitimacy of Nicholas, claiming to be third earl of Banbury, upon which rested the pretensions of the prisoner, Charles, is now (1811) under consideration of the House of Lords, upon the Petition of William, representative of Nicholas, claiming to be earl of Banbury. In the course of the proceedings upon this Petition, their lordships (April 13, 1808) ordered to be printed a Report from the Committee of Privileges, to whom the consideration of his Petition had been referred. By means of that Report, I am enabled to improve the account of this case, given in former editions, by the insertion of matter relating to it, which is contained in the Minute Book and Committee Book, but does not appear upon the Journal. I insert not, however, the whole of the new matter contained in that Report, but only such parts of it as correct or illustrate what was inserted in the former Edition of the "State Trials."

† "Brother to sir Henry Lawson, of Brough, in Yorkshire, bart." Former Edition.

sua dextra ad tunc et ibid' extract' habuit et tenuit p'fat' Philippum Lawson in et sup' sinistram partem corporis ipsius P. ad tunc et ibidem felonice voluntarie et ex malitia sua precogitata p'cussit et pupugit dans eidem P. L. ad tunc et ibidem cum gladio extract' pred' in et sup' p'd' sinistram partem corporis ipsius Philippi L. prope dict' breves costas ipsius P. un' vulnus mortal' (Anglice "one mortal wound") latitud' un' pollicis et profunditat' sex polliciu' de quo quidem vulnere mortal' p'd' P. L. ad tunc et ibidem instant' obiit. Et sic jur' p'd' dicunt sup' sacr'um suum quod p'd' C. K. p'fat' P. L. modo et forma p'd' ad tunc et ibidem felonice voluntarie et ex malicia sua p'cogitat' interfecit et murdravit contra pacem dictor' domini regis et domine regine nunc coron' et dignitat' suas, &c. Quod quidem indictament' dominus rex et domina regina nunc coram eis postea certis de causis venir' fecer' terminand', &c. p' quod p'cept' fuit vic' com' p'd' quod non omitt', &c. quin caperet en' si, &c. ad respond', &c. Et modo scilt' die Martis prox' post Octab' Sci' Hillar' isto eodem termino coram domino rege et domina regina apud Westm' ven' Carolus Comes Banbury sub custod' Will' Richardson gen' custod' gaol' dominor' regis et regine de Newgate virtute brevis dominor' regis et regine de habend' corpus ad subjiciend', &c. ei inde direct' in ejus custod' p'antea ex causa p'd' p' nomen Caroli Comitis Banbury al' dict' Caroli Knowles ar' comiss' fuit ad barr' hic duct' in propria persona sua. Et statim de p'miss' ei superius imposit' alloquutus qualiter se velit inde acquietari dicit quod ipse est persona in indictament' p'd' mentionat' et intens' per nomen Caroli Knowles de paroch' Sancti Egidii in Campis in com' Midd' ar' et versus quem indictament' p'd' p'lat' existit p' feloniam et murther predict'. Et dic' quod ipse ad indictament' ill' respondere compelli non debet quia dic' quod dominus Carolus primus nup' rex Angl' &c. p' literas suas patentes sub magn' Sigillo suo Angl' geren' dat' apud Banbury 18 die Augusti anno reg' sui secundo quas quidem literas paten' sub magno Sigillo ejusdem nup' regis Angl' sigillat' p'd' C. comes B. hic in cur' p'fert' de gra' sua speciali et ex certa scient' et mero motu suis Will' ad tunc vic' Wallingford ad statu' gradu' dignitat' et honorem comitis Banbury erexit p'fecit et creavit eidmq; Will' nomen statu' styli' dignitat' titulu' et honorem comitis Banbury imposuit dedit et prebuit p' easdem literas paten'. Ac ipsum Will' eodem nomine stat' titulo stylo honor' et dignitat' comitis per gladii cinturam cape honoris et circuli aurei impositionem insignivit et realit' nobilitavit p' easdem literas

paten' habend' et tenend' eadem nomen statu' gradu' dignitat' stylo' tytulu' et honorem comitis Banbury cum omnibus et singulis preheminentiis honoribus ceterisq; hujusmodi nomini statui gradu' dignitat' stylo' titulo et honori comitis p'tinen' sive spectan' p'fat' Williel' et heredibus masculis de corpore suo exeun' imp'petuum volen' et per easdem literas paten' conceden' p' se hered' et successoribus suis quod p'fat' Willielmus et hered' sui masculi pred' nomen statum gradu' titulu' et honorem pred' successive gererent et haberent et eorum quilibet gereret et haberet et per nomen Comitis Banbury successive vocarentur et eorum quilibet vocaretur prout per easdem literas paten' plenius apparet virtute quarum quidem literar' paten' pred' Willielmus fuit comes Banbury et seit' de statu gradu' titulo et honore comitis Banbury in dominico suo ut de feodo talliat' videlt' sibi et hered' mascul' de corpore suo exeun'. Et sic inde seit' existen' idem Willielmus Comes Banbury obiit sic inde seit' scilt' apud p'd' paroch' sancti Egidii in Campis in com' Midd' p'd' post cujus mortem status gradus titulus et honor Comitis Banbury p'd' descendebat Edwardo Knollis ut fil' et hered' mascul' de corpor' p'd' Willielmi Comitis Banbury per quod idem Edwardus fuit Comes Banbury et seit' de statu gradu' titulo et honore Comitis Banbury pred' in dominico suo ut de feodo talliat' videlt' sibi et heredibus masculis, de corpor' pred' Willielmi exeun' scilt' apud paroch' Sancti Egidii in Campis pred'. Et sic inde seit' existen' idem Edwardus Comes Banbury obiit inde seit' sine hered' mascul' de corpore suo exeun' scilt' apud paroch' pred' post cujus mortem status gradus titulus et honor Comitis Banbury pred' descendebat Nicholao Knollis ut hered' masculo de corpore pred' Willielmi Comitis Banbury videlt' fratri et hered' pred' Edwardi fil' et hered' pred' Willielmi per quod idem Nicholaus fuit Comes Banbury pred' et seit' de statu gradu' et honore Comitis Banbury pred' in dominico suo ut de feodo talliat' videlt' sibi et hered' mascul' de corpore pred' Willielmi tunc nup' Comitis Banbury exeun' scilt' apud paroch' Sancti Egidii in Campis pred'. Et sic inde seit' existen' idem Nicholaus Comes Banbury obiit inde seit' scilt' apud paroch' pred' post cujus mortem status gradus et honor Comitis Banbury predict' descendebat pred' Carolo ut hered' mascul' de corpore pred' Willielmi nuper Comitis Banbury exeun' videlt' fil' et hered' pred' Nicholai nup' Comitis Banbury fratr' et hered' pred' Edwardi fil' et hered' ejusdem Willielmi per quod idem Carolus tempore caption' Indictament' pred' fuit et adhuc existit seit' de et in statu gradu' et honore Comitis Banbury pred' in dominico suo ut de feodo talliat' videlt' sibi et hered' mascul' de corpore pred' Willielmi exeun' et Comes Banbury adhuc existit scilt' apud pred' paroch' Sancti Egidii in Campis. Et hoc parat' est verificare unde ex quo non nominatur in indictament' pred' per pred' nomen Comitis Banbury pet' Judic' de Indictament' pred' et si ipse ad In-

dictament' ill' ulterius respondere compelli debeat, &c.

CRESWELL LEVINZ.

BARTHOLOMEW SHOWER.

Repl. Et Johannes Somers Mil' Attorn' Domini Regis et Domine Regine nunc general' qui pro eisdem Domino Rege et Domina Regina in hac parte sequitur protestando non cognoscendo aliqua in placito pred' Caroli fore vera dicit quod pred' C. Knowles in Indictament' pred' nominat' ad Indictament' ill' respondere debet quia dicit quod ipse idem C. K. per nomen Caroli Comit' de Banbury alias scilt' 13 die Decembris Anno Regni, dictor' Domini Regis et Domine Regine nunc quarto exhibuit quandam petitionem suam inscript' Dominis spiritual' et temporal' in Parliament' adtunc et adhuc tent' apud Westm' in Com' Midd' assemblat' per eandem petitionem, allegan' et pretenden' quod ipse idem Carolus Jure hereditar' adtunc fuit Comes de Banbury ac un' magnat' hujus Regn' Angl' adtunc indictat' pro morte pred' P. L. unde idem Carolus eisdem Dominis spiritual' et temporal' adtunc et ibidem in eodem parliament' assemblat' humillime supplicavit quod ipse idem Carolus de et pro morte pred' P. L. triat' esset per magnat' ejusdem Regni taliterq; superinde process' fuit quod postea scilt' die Martis 17 die Januarii Anno Regni dictor' Domini Regis et Domine Regine nunc quarto per eosdem Dominos spiritual' et temporal' in eodem Parliament' adtunc et ibidem assemblat' secundum legem et consuetud' Parliament' resolut' considerat' et ordinat' fuit quod pred' Carolus non habuit aliquod jus pred' titulo et honori Comitis Banbury quodq; ista eadem petitio abiunde dimiss' esse sicut per record' inde inter record' Parliament' hic apud Westm' pred' remanen' plenius liquet et apparet. Et hoc parat' est verificare unde pet' judic' et quod Indictament' pred' bon' adjudicetur quodq; pred' C. K. ad Indictament' illud ulterius respondeat, &c.

J. SOMERS.

I. TREVOR.

J. TREMAIN.

Demurr. Et pred' Carolus in propria persona sua ven' et dic' quod pred' placitum p'fat' Attorn' Dominor' Regis et Regine nunc general' in forma pred' superius replicando placitat' materiaq; in eodem content' minus sufficien' in lege existunt ad compellend' eundem Carol' eidem Indictamento ulterius respondere unde pro defectu sufficien' replication' ad placitum pred' p'fat' Caroli in hac parte placitat' idem Carolus ut prius pet' judic' de Indictament' ill' et quod ipse Indictament' pred' per Cur' hic exoneretur et dimittatur, &c.

Joinder. Et Edwardus Ward Ar' Attorn' dictor' Dominor' Regis et Regine nunc general' qui pro eisdem Dominis Rege et Regina in hac parte sequitur pro eisdem Dominis Rege et Regina dicit quod placitum pred' Attorn' Dominor' Regis et Regine nunc general' in forma p'd' superius replicand' placitat' materiaq; in eodem content' bon' et sufficien' in lege existunt ad compellend' eundem Carol' eidem Indictament' ulterius respondere. Quod quidem pla-

citum superius replicando placitat' materiaq;
in eodem content' idem Attorn' dictor' Domi-
nor' Regis et Regine nunc general' pro eisdem
Dominis Rege et Regina nunc parat' est verifi-
care prout Cur', &c.

EDWARD WARD.

THOMAS TREVOR.

JOHN TREMAIN.

March 22, 1694.

It is ordered by the Lords spiritual and temporal in parliament assembled, That Mr. Attorney-General do give this House an account in writing of the proceedings in the court of King's Bench, against the person who claims the title of earl of Banbury.

April 11, 1694.

Then their majesties Attorney-General delivered in an Account of the proceedings in the Court of King's-Bench, against the person who claims the title of the earl of Banbury, which was read as follows, viz.

An Account of the Proceedings in the Court of King's-bench, against the person who claims the title of earl of Banbury, delivered in by their Majesties Attorney-General, pursuant to an order of the right honourable the lords spiritual and temporal in Parliament assembled, the 22d of March, 1694.

A bill of indictment being found at Hicks's-hall, in December, 1692, against Charles Knowles, esq. for the murder of Philip Lawson, gent. it was removed into the King's-bench, and the said Charles Knowles was, in Hillary term following, arraigned thereupon in the King's-bench, and put in a special Plea in writing to this effect, That he ought not to be compelled to answer to that indictment, because king Charles the 1st, by letters patents under the great seal, which he produced in court, dated the 18th of August, in the 2nd year of his reign, created William, then viscount Wallingford, earl of Banbury, and conferred upon him the name, stile, title, and dignity of earl of Banbury, to hold to the said William, and the heirs males of his body for ever: that earl William thereby became seized of the honour of earl of Banbury, to him, and the heirs males of his body, and died thereof so seized; and that the said honour descended to Edward, his son and heir male of his body, who became seized thereof in fee-taile to him, and the heirs males of the body of the said William, and that he died seized without any issue male of his body; after whose death, the said title and honour of earl of Banbury, descended to Nicholas Knowles, as heir male of the body of the said William, (that is to say) brother and heir of Edward, who was son and heir of the said William, by which the said Nicholas was earl of Banbury, and seized of the title and honour of earl of Banbury, in his demesne as of fee, to him, and the heirs male of the body of the said William, then earl of Banbury, issuing; and being thereof so seized, the said

Nicholas died; after whose death, the said title and honour of earl of Banbury did descend to the defendant Charles, as heir male of the body of the said William, late earl of Banbury, viz. son and heir of Nicholas, brother and heir of Edward, who was son and heir of William; whereby the defendant came, and yet is seized of, and in the state, degree, and honour of earl of Banbury, in his demesne as of fee-taile, to him, and the heirs males of the body of the said William issuing, and yet is earl of Banbury, which he is ready to verify; and therefore he the said defendant Charles, not being named in the indictment by the name of earl of Banbury, prayed judgment of the indictment, and whether he ought further to be compelled to answer to it.

To this Plea their majesties Attorney-General, by protestation, not acknowledging any thing in the said Plea to be true, replied, That the defendant ought to answer to that indictment, for that the said Charles Knowles, by the name of Charles earl of Banbury, the thirteenth of December, in the fourth year of their majesties reign, exhibited a petition in writing to the lords spiritual and temporal in parliament assembled, thereby alledging, and pretending, that he then was by right of inheritance earl of Banbury, and one of the peers of this realm; and then indicted for the death of the said Lawson, and humbly prayed the lords spiritual and temporal in parliament assembled, that the said Charles, of and for the death of the said Lawson, might be tried by the peers of this realm. And that it was thereupon so proceeded, that on the 17th of January following, it was by the said lords spiritual and temporal in parliament assembled, according to the law and custom of parliament, resolved, considered, and ordered, that the said Charles had not any right to the said title and honour of earl of Banbury, and that the petition should be dismissed, as by the record thereof, amongst the records of parliament more fully appeared. And prayed judgment, that the said indictment might be adjudged good, and that the defendant might answer over to the indictment.

Some time having been spent in motions about the pleadings, and in giving rules to the defendant to rejoin to the attorney-general's replication, and about bailing the defendant, and the defendant having demurred to the replication, wherein the attorney-general joined, not moving to have the record a *concilium* (as is usual for the party to do that demurs); the attorney-general moved it in Michaelmas term last, and by rule of court it was made a *concilium*, and appointed to be argued the then next term, which was Hilary term last: in which term, near the beginning, it was argued by counsel on both sides. And on the defendant's counsel's motion, another day was appointed for a further argument at the same term; at which day it was argued on the king's behalf, and no counsel then attending for the defendant, the court made a rule that the defendant should answer over, unless cause should

he shewed to the contrary the Saturday following; at which time it was argued for the defendant (there being then, and at the last argument, only two judges in court, one judge dying in the beginning of the term, and another being absent by reason of sickness). Upon which last argument the court discharged the former rule; and upon the defendant's counsel's motion, a further *concilium* was made of it, for the next Easter term.

The Defendant is under bail, *corpus* for *cor-pore*.

Upon reading this day, An Account of the proceedings in the court of King's-bench, against the person who claims the title of earl of Banbury, it is ordered by the Lords spiritual and temporal in parliament assembled, That such of the justices of their majesties court of King's-bench as are now in town, and not sick, do attend this house on Saturday next, at eleven o'clock in the forenoon.

April 13, 1694.

Whereas to-morrow is appointed for the judges to attend upon the Account delivered in the eleventh instant, by their majesties Attorney-General, of the proceedings in their majesties court of King's-bench, against the person who claims the title of earl of Banbury, it is ordered by the Lords spiritual and temporal in parliament assembled, That all the judges now in town, do attend this house thereupon on Monday next, at eleven of the clock, and that all the lords be summoned then to attend.

Nov. 27, 1694.

A debate arising touching the proceedings in the court of King's-bench, relating to the person who claims the title of earl of Banbury,

The question was put, Whether Mr. Attorney-General shall give this House an account what proceedings have been in the court of King's-bench, since the 11th of April, 1694, in relation to the person who claims the title of earl of Banbury?

It was resolved in the affirmative.

It is ordered by the Lords spiritual and temporal in parliament assembled, That their majesties Attorney-General do give this House an account on Tuesday the 4th day of December next, what proceedings there have been in the court of King's-bench, relating to the person who claimed the title of earl of Banbury, since the 11th of April, 1694, and that all the lords be summoned then to attend.

Dec. 4, 1694.

After their majesties attorney general had given the house an account of the proceedings in the court of King's-bench, in relation to the person who claimed the title of earl of Banbury, and debate thereupon,

The question was put, whether the house shall be now adjourned?

It was resolved in the negative. And

Ordered by the Lords spiritual and temporal

in parliament assembled, That the proper officer in the court of King's-bench, do bring before this house, to morrow at eleven o'clock, the record of the judgment of Charles Knowles, who claimed the title of earl of Banbury, and the proceedings of that court thereupon.

It is ordered by the Lords spiritual and temporal in parliament assembled, That the debate this day touching the proceedings in the court of King's-bench, in relation to the person who claimed the title of earl of Banbury, shall be adjourned till to morrow morning, eleven of the clock in the forenoon.*

Dec. 5, 1694.

The record of the court of King's-bench being this day brought into the House, (pursuant to the order yesterday) relating to the person who claimed the title of earl of Banbury, and a debate arising thereupon, it is ordered by the Lords spiritual and temporal in parliament assembled, That the said debate shall be, and is hereby adjourned until Wednesday next, the 12th day of this instant December, at ten o'clock in the forenoon.

It is ordered by the Lords spiritual and temporal in parliament assembled, That the records of the court of King's-bench, brought in this day, shall be returned to the proper officers, and that they attend with them again, on Wed-

* This is the entry in the Journal of the proceedings on this day before the Lords upon the Banbury claim: but in the Minute Book those proceedings are entered thus,

"Upon reading the order of 27th November last for Mr. Attorney General to give the House an account of the proceeding in the King's-bench concerning the person who claimed the title of earl of Banbury.

"Mr. Attorney General gave the House an account that the cause was argued by one counsell on either the side in Easter term the court gave their opinion in Trinity term last and read the rule of court for the judgment and the bayle and the copy of the record of the bayle.

"The proceedings in the journal 17 January 1662 were read out of the journal.

"Moved that the record be brought into the House.

"Moved to adjourn.

"After Debate the question was put, whether the House shall be now adjourned.

"It was resolved in the negative.

"Ordered that the proper officer in the court of King's-bench do bring before this House to-morrow at 11 o'clock the record of the indictment of Charles Knowles who claimed the title of earl of Banbury and the proceedings of that court thereupon.

"Ordered that the debate this day relating to the person who claimes the title of earl of Banbury shall be adverted to to-morrow 11 o'clock." See 'Report from the Committee of Privileges on the Banbury Peerage, of the Proceedings heretofore had, touching the said title: Ordered to be printed April 13, 1808.

nesday the 12th day of this instant December, at ten o'clock in the forenoon.

Dec. 12, 1694.

This day being appointed to resume the fore-said debate, concerning the person who claimed the title of earl of Banbury, and for the proper officers of the court of King's-bench, to attend with the records of that court relating thereunto, it is ordered by the Lords spiritual and temporal in parliament assembled, That the said debate shall be, and is hereby adjourned, till Monday the 24th day of this instant December, at ten of the clock in the forenoon, and that the proper officers of the court of King's-bench do then attend with the records as was formerly ordered.

Dec. 22, 1694.

It is ordered by the Lords spiritual and temporal in parliament assembled, That this House will resume the adjourned debate concerning the person who claimed the title of earl of Banbury on Wednesday the second day of January next, at ten o'clock in the forenoon, and that the proper officers of the court of King's bench do then attend with the records as formerly ordered.

Jan. 26, 1697.

A Petition to his majesty being this day offered on behalf of the person who claims the title of earl of Banbury, and his majesty's reference thereupon, it is ordered by the Lords spiritual and temporal in parliament assembled, that the said Petition and reference shall be considered on Saturday the 29th day of January instant, at 12 o'clock, and that all the Lords be summoned then to attend; and the clerks then bring the books wherein the former proceedings in relation to this matter are entered.

Jan. 29, 1697.

The order being read for considering the petition of the person who claims the title of earl of Banbury,

The Petition to his Majesty, and his Majesty's reference thereupon to this House, was read as follows:

To the King's most excellent Majesty,

The humble Petition of Charles Knowles, son and heir of Nicholas, brother and heir of Edward, son and heir of William, late viscount Wallingford, and earl of Banbury,

Humbly sheweth; That his late most excellent majesty king Charles the first, by his letters patents, under his great seal of England, bearing date at Canterbury, the 18th day of August, in the second year of his reign, of his special grace, certain knowledge, and mere motion, did prefer and create William, then viscount Wallingford, to the state, degree, and honour of earl of Banbury, and did give to him the name, style, and dignity thereof, and with the same name, degree, and dignity of earl, did

really invest, and nobilitate him, to hold the same to him the said William, and the heirs males of his body issuing for ever: That by force of these letters patents, the said William became seized to him, and the heirs males of his body, of the said earldom, and accordingly had and enjoyed place and precedence in the House of Peers as an earl of this kingdom: That the said William died so seized, leaving Edward and Nicholas his issue. That Edward died under age, and without issue; whereupon the said title descended to your petitioner's said father Nicholas, and he became thereby rightfully entituled to the said name, title, and dignity, and was accordingly deemed, reputed, and taken as earl of Banbury, and as such sat in the House of Lords, in the convention parliament, upon the restoration of king Charles 2. That afterwards, some dispute arising, concerning the precedence of the said Nicholas, and the influence of the late king James, then duke of York, prevailing against him, your petitioner's said father, he was forced to withdraw and forbear the use of his right of sitting in the House as a peer of this realm, during his life, although he had proved his legitimacy and heirship, by four witnesses, sworn at the bar of the House of Peers, and examined at a committee, who made a report accordingly, in favour of his right, as by the proceedings in the House more fully appears: That by his decease, the said title and dignity descended upon your petitioner, as his son and heir: that your petitioner having had the misfortune of being accused and imprisoned for killing Philip Lawson, your petitioner did, for his trial, and in order to have it according to the laws of this realm, by his peers, petition the House of Lords thereupon; whereas your petitioner ought in duty, according to the legal methods in cases of this nature used and approved, to have made his application to your most sacred majesty, as the fountain of all the honour within this realm; and accordingly the misadvised petition was dismissed. And your petitioner further humbly shews, that then your petitioner was indicted for the offence committed, by the name of Charles Knowles; and upon his arraignment in the King's-bench, your petitioner did plead the said title, and the descent thereof to him, in manner aforesaid, and that therefore his name was Charles earl of Banbury; to which your majesty's Attorney General replied the dismissal of the said petition by the House of Peers, and thereupon your petitioner demurred; and after many long arguments, judgment was given by the right honourable the Lord Chief Justice Holt, and the rest of the judges there, in favour of your petitioner's name and title: That your petitioner stands likewise indicted by the name of Charles earl of Banbury, for the same offence, and that the same remains undetermined, for the reasons aforesaid. That by reason of the premises, your petitioner did suffer long imprisonment, and great expences, and is still under the same accusation, by the

name of a peer, and as such hath been taxed upon the poll act, and during your petitioner's troubles, writs have issued out of your majesty's court of Exchequer, for the same charge as a peer, which he hath since satisfied.

Now, forasmuch as your petitioner humbly conceives himself well entitled to the said title and dignity, and that your petitioner may the better be enabled to shew and manifest his zeal for your majesty's service, as by the duty of his allegiance he is obliged,

Your petitioner humbly prays your majesty's tender consideration of the premises, and that you would be pleased to declare your royal pleasure in favour of your petitioner's said right, by granting him a writ of summons to parliament, or to recommend your petitioner's case to an examination by the Lords spiritual and temporal in parliament assembled, in order to your majesty's more certain information of the truth of the premises; or otherwise to do herein, as your majesty's great wisdom shall seem most meet.

And your petitioner shall, as in duty bound, daily pray for your majesty's, &c. **BANBURY.**

WILLIAM R.

We are graciously pleased to refer this Petition to the House of Peers, to examine the petitioner's claim and title therein mentioned, and to certify us how the same shall appear to them, with their opinion thereupon. Given at our court at Kensington, the 18th day of January, 1697, in the 9th year of our reign.

By his majesty's command. **JA. VERNON.**

After debate thereupon,

These lords following were appointed to draw up a Representation to be presented to his majesty, of what proceedings have been formerly in this House, in relation to this matter, and report the same to this House:

Dux Leeds.	D. Preses.	D'us Bergevenny
Dux Somerset		D'us Audley
Dux Bolton		D'us Lawarr
March' Halifax		D'us Ferrers
March' Normanby		D'us Wharton
Co. Bridgewater		D'us Howard Esc'
Co. Stamford		D'us Culpeper
Co. Thanet		D'us Lucas
Co. Nottingham		D'us Cornwallis
Co. Rochester		D'us Dartmouth
Co. Abingdon		D'us Guildford
Co. Marlborough		D'us Godolphin
Co. Warrington		D'us Jeffreys
Co. Bradford.		D'us Herbert
Vic. Townshend		D'us Haversham.

Their lordships, or any five of them, to meet on Tuesday next, at eleven o'clock in the forenoon, in the prince's lodgings, near the House of Peers. And it is ordered, That this committee do meet again on Thursday the 3rd day of February next, at eleven o'clock, in the same place, to consider of the proceedings of the court of King's-bench, since the judgment of this House, 17th of January, 1692, in relation to this matter, and have power to send for per-

sons, papers, and records, and report to this House their opinion thereupon.

February 1, 1697.

A Representation of the form of proceedings in this matter was drawn and ordered to be reported.

Memorandum, that being transcribed, it was left with the lord in the chair.

Ordered by the Lords Committees appointed to draw a Representation to be presented to his majesty of what proceedings have been formerly in the House of Peers relating to Charles Knowles, who claims the title of earl of Banbury, That the proper officer in the court of King's-bench do bring before their lordships on Thursday next, at 11 o'clock, in the prince's lodgings, &c. the records of all the proceedings in the said court of King's-bench, relating to the trial of the said Charles Knowles, who stiles himself earl of Banbury.

February 3, 1697.

Mr. Harcourt is called in.

He saith the indictment is in the Treasury-office.

Mr. Bolt, the officer there, being not yet come with the record, the yeoman usher is sent to him to attend presently with it.

The said officer being come with the record, Mr. Harcourt reads the indictment, the plea, and the following proceedings thereupon, relating to the trial of Charles Knowles, in the court of King's-bench, touching the murder of Philip Lawson.

The officers withdraw.

Mr. Harcourt being called in again, was asked,

Whether there was any further indictment directed by the court of King's-bench than the above mentioned?

He saith there was none directed by the court, but he thinks there was an inquisition found, and that it was by the name of Charles Knowles.

He is directed to search whether he was not since the before mentioned proceedings, indicted by the name of Charles earl of Banbury. He is also ordered to attend at the next meeting with the records now read by him.

Ordered, That the Lord Chief Justice of the court of King's-bench, do attend their lordships on Saturday next, at 11 o'clock, in relation to the proceedings that have been before him in the said court of King's-bench, on the trial of the person that stiles himself earl of Banbury.*

* N. B. This entry of February 3rd, and the two preceding of February, are not in the Journal; I have extracted them from the Report of the Comm. of Priv. ordered to be printed April 13, 1808, in which they are cited from the Committee Book, in which are likewise contained the following entries of Feb. 5th, and Feb. 7th.

February 3, 1697.

The earl of Rochester reported from the Committee the representation drawn by them to be presented to his majesty, in relation to the

February 5, 1697.

The Lord Chief Justice of the court of King's-bench, being called in and acquainted with the order to the committee, and told, that their lordships have perused the record of the said court, relating to the trial of the person who calls himself earl of Banbury, for the murder of Philip Lawson, and he being acquainted by their lordships there having been an indictment before him and the other judges of the court of King's bench, against the said person, by the name of Charles Knowles, esq. since the House of Lords had come to a judgment that the said person had no right to the title of earl of Banbury, and that the Attorney General had pleaded the said judgment of the House, yet the court of King's-bench had thought fit to quash the said indictment, he was desired to give their lordships an account why that court had so done. He spoke to the effect following:

"I acknowledge the thing. There was such a plea and such a replication. I gave my judgment according to my conscience. We are trusted with the law, we are to be protected, and not arraigned, and are not to give reasons for our judgment, and therefore I desire to be excused from giving any."—He withdraws.

After some time he is called in again, and asked, whether he persists in the answer he hath given.

He answered to the effect following:

"I gave judgment as it appears on the record.

"It would be a submitting to an arraignment for having given judgment if I should give any reasons here. I gave my reasons in another place at large.

"If your lordships report this to the House, I desire to know when you do so, that I may then desire to be heard in point of law.

"The judgment is questionable in a proper method, but I am not to be questioned for my judgment.

"Mr. Justice Eyres (who then sat on the bench with me, and concurred with me and the other judges) is living. I am not any way to be arraigned for what I do judicially. The judgment may be arraigned in a proper method by writ of error. I might answer if I would, but I think it safest for me to keep myself under the protection the law has given me; I look upon this as an arraignment; I insist upon it, if I am arraigned, I ought not to answer."—He withdraws.

Ordered, That Mr. Justice Eyres do attend their lordships on Monday next, at 11 o'clock, in relation to the proceedings that have been before him in the court of King's-bench, on the trial of the person that stiles himself earl of Banbury.

Mr. Harcourt attending with the records of the King's-bench, is called in, he read an ab-

proceedings of this House, upon the petition of a person who claims the title of earl of Banbury, which was read, and agreed to as follows, viz.

We the Lords spiritual and temporal in par-

stract he had taken of them, and left it with the clerk.

He acquainted their lordships, that Mr. Knowles is now under bail.

Saith there were two indictments. The indictment by the name of Charles Knowles, is quashed. The other by the name of earl of Banbury, is still in being—being asked how the indictments were brought into court, he said it was by rule of court.

Adjourned to Monday, 11 o'clock.

February 7, 1697.

Mr. Justice Eyres attending, was called in, and acquainted in the same manner as the Lord Chief Justice had been, what the Lords Committees had observed upon perusal of the records of the court of King's-bench, relating to the trial of the person claiming to be earl of Banbury, and being asked the same question the said Lord Chief Justice had been asked, he answered to the effect following:

"I remember we adjudged the earl of Banbury's plea to be good in law; he was indicted by the name of Charles Knowles, esq. he pleaded a patent to his grandfather from king Charles the first, and claimed by descent from him; we all held it a good plea, and I was of that opinion, I own it, it was according to my judgment and conscience.

"The king intrusts me with the administration of justice. I have ever given my opinion upon the greatest consideration and upon my conscience.

"I humbly beg pardon if I say I ought not by the law to be called to account for the reasons of my opinion. If we err, the judgment may be rectified by writ of error, but the law acquits us.

"I humbly beg pardon as to the reasons for my opinion; if the matter come before the lords by writ of error I shall give my reasons as well as my opinion, being called by writ *ad consulendum*. I humbly beg your pardon for giving no reasons at present."

Ordered to report the matter specially.

The following entry of what was done on February 10, is inserted in the Report ordered to be printed April 13th, 1808, from the Minute Book:

February 10, 1697.

The report from the lords committees appointed to consider of the proceedings in the King's-bench since the judgment of the house, January 17, 1692, in relation to the person who claims the title of E. of Banbury, was read as follows:

That their lordships have perused the Records of the said court relating to the trial of the person who calls himself earl of Banbury for the murder of Philip Lawson, and have been attended by the lord chief justice of that court,

liament assembled, having received a reference upon a petition to your majesty, from a person who stiles himself earl of Banbury, for a writ of summons to sit as a peer in parliament, do

and he being acquainted by their lordships that there having been an indictment before him, and the other judges of the court of King's-bench against the said person by the name of Charles Knowles, esq. since the house of lords had come to a judgment that the said person had no right to the title of earl of Banbury; and that though his majesty's attorney general had pleaded the said judgment, yet they had thought fit to quash the said Indictment. Their lordships desired him to give them an account why that court had so done.

He answered to the effect following:

"I acknowledge the thing; there was such a plea and such a plea and such a replication; I gave my judgment according to my conscience, we are trusted with the law: we are to be protected and not arraigned; and are not to give reasons for our judgment; therefore I desire to be excused for giving any.

"After some time being again asked whether he persisted in the answer he had now given, he answered to the effect following:

"I gave judgment as appears on the record. It would be a submitting to an arraignment for having given judgment if I should give any reasons here; I gave my reasons in another place at large.

"If your lordships report this to the house, I desire to know when you do so, that I may then desire to be heard in point of law.

"The judgment is questionable in a proper method; but I am not to be questioned for my judgment.

"I am not any way to be arraigned for what I do judicially; the judgment may be arraigned in a proper method by writ of error.

"I might answer if I would; but I think it safest for me to keep myself under the protection the law has given me. I look upon this as an arraignment; I insist upon it if I am arraigned I ought not to answer. Mr. Justice Eyre, who then sat on the bench and concurred with me and the other judges, is living.

"Whereupon Mr. Justice Eyre being summoned and attending was acquainted in the same manner as the lord chief justice had been what the lords committees had observed upon perusal of the records of the court of King's-bench, relating to the trial of the person claiming to be earl of Banbury, and being asked the same question the lord chief justice had been asked, he answered to the effect following:

"I remember we adjudged the earl of Banbury's plea to be good in law. He was indicted by the name of Charles Knowles, esq. He pleaded a patent to his grandfather from king Charles the first, and claimed by descent from him. We held it a good plea, and I was of that opinion. I own it was according to my judgment and conscience.

"The king intrusts me with the administra-

tion of justice; I have ever given my opinion upon the greatest consideration and upon my conscience.

tion of justice; I have ever given my opinion upon the greatest consideration and upon my conscience.

"I humbly beg pardon if I say I ought not by the law to be called to account for the reasons of my opinion; if we err in judgment the judgment may be rectified by writ of error, but the law acquits us.

"I humbly beg pardon as to the reasons for my opinion; if the matter come before the lords by writ of error, I shall give my reasons as well as my opinion, being called by writ *ad consulendum*. I humbly beg your pardon for giving no reasons at present.

"Proposed to hear the lord chief justice as to this point, whether he did right in refusing to give account to the committee or not of his reasons for his judgment in the King's-bench in relation to the quashing the indictment of a person who claimed the title of earl of Banbury.

"Ordered, that the lord chief justice of the King's-bench and Mr. justice Eyre do forthwith attend this House.

"The lord chief justice being come, the Speaker acquainted him with the report, and that thereupon the house had sent for him and Mr. Justice Eyre, and that the house expects that he give them an account why he refused to give the committee the account which he refused to do; and that he desiring to be heard when the report was made, they had now sent for him to give your reasons why he does not think fit to give the committee the reasons for your judgment.

"Then the order of reference to the committee was read.—And also the foregoing report from the committee was read.

"The lord chief justice was heard for himself.

"I never heard of any such thing demanded of any judge as to give reasons for his judgment. I did think myself not obliged by law to give that answer.

"What a judge does in open court he can never be arraigned for it as a judge.

"A privy counsellor and a jurymen is obliged to keep secret.

"Mr. Justice Eyre was heard. I have no reason to find fault with the report. I refer to what my lord chief justice hath said."

It was moved that the lord chief justice and J. Eyre withdraw.—Agreed that they do not withdraw.—After debate

The lord chief justice was heard, after the house in debate agreed, that the questions asked him at the committee were not intended as to accuse.

He said he had other reasons to induce him not to do it. Moved to adjourn the debate.

Ordered that this debate shall be adjourned to Monday next 11 o'clock.

Ordered, That the lord chief justice and Mr. justice Eyre attend this house on Monday next,

his trial by his peers; and that if any question should arise thereupon, that he might be heard by his counsel at the bar of this House: upon which the lords did order the petitioner to be heard by his counsel at the bar of their House, for the making out this title to the said earldom; and also your majesty's Attorney-General to be heard on your majesty's behalf; and upon full hearing on both sides, the House came to this resolution and judgment,

That the petitioner had no right to the title of earl of Banbury, and ordered his petition to be dismissed; which judgment, the lords have great reason to believe, was not made known to your majesty at the time of making the aforesaid reference. All which is humbly represented to your majesty.

Ordered, That the lords, with white staves, do attend his majesty with the Representation of this House, concerning the person that claims the title of earl of Banbury.

February 7, 1697.

The earl of Rochester having offered to the House what he was ordered to report from the Lords' Committee, appointed to consider of the proceedings in the court of King's-bench, since the judgment of this House, of the 17th of January, 1692, in relation to the person who claimed the title of earl of Banbury, it is ordered by the Lords spiritual and temporal in parliament assembled, That this matter shall be considered on Thursday next at eleven of the clock.

February 10, 1697.

After reading this day the reports from the Lords' Committees, appointed to consider of the proceedings in the court of King's-bench, since the judgment of this House, the 17th of January, 1692, in relation to the person claiming the title of earl of Banbury, and sending for, and hearing the lord-chief-justice of that court, and Mr. Justice Eyre, to the matter of the said report, and debate thereupon; it is ordered by the Lords spiritual and temporal in parliament assembled, That this debate shall be, and is hereby adjourned to Monday next, at 11 o'clock in the forenoon; and that the said lord-chief-justice, and Mr. Justice Eyre, do then attend, and also one other judge of each court in Westminster-hall.

But there was no further proceeding in this business.

The Proceedings in the House relating to the title of the earl of Banbury, before March 22, 1693, is as followeth:

Earl of Banbury. July 13, 1660.

It was moved, That there being a person that

11 o'clock, and also one judge of each court in Westminster-hall.

Compare this conduct of Holt and Eyre with that of the judges in the earl of Devonshire's Case, Vol. 11, p. 1354, and in Jay v. Topham, Vol. 12, p. 322.

now sits in this House as a peer, who, as is conceived, hath no title to be a peer, viz. the earl of Banbury, it is ordered, That this business shall be heard at the bar by counsel, on Monday come sennight.

June 6, 1661.

The lord-great-chamberlain signified to the House, That the king appointed him to deliver a paper to their lordships consideration, which was presented to his majesty, and the House commanded the same to be read, which was done, viz.

To the King's Most Excellent Majesty: The humble PETITION of NICHOLAS, Earl of BANBURY,

Humbly sheweth; That your majesty's royal father, king Charles, by his letters patents, under the great seal of England, bearing date the 18th of August, 2 Car. for the great and many services done by your petitioner's father, sir William Knowles, knight, and viscount Wallingford, granted to him, and his heirs males of his body issuing, the name, title, and dignity of earl of Banbury, with all privileges of state, and voice in parliament, as other peers of the kingdom had, as by the said letters patents more fully appears.

That the said earl, after marrying with Elizabeth, daughter of the earl of Suffolk, had issue by her, Edward, his eldest son, who died without issue, and your petitioner* was born in January, 1630, about a year and a half before the said earl's death.

That your petitioner, as son and heir of the said late earl, sate in the last parliament as earl of Banbury, as of right he might, and hath used and had all privileges as other earls there; but having no writ of summons to this present parliament from your majesty, as other the peers have, hath forborne to sit there, although he hath done nothing to deprive him of his title thereto, nor to his knowledge to incur your majesty's displeasure.

Your petitioner therefore humbly prays, That your majesty will be graciously pleased, that he may have a writ of summons to this parliament, as earl of Banbury, and enjoy all the precedency and privilege thereunto belonging, granted by your majesty's royal father, by his said letters patents.

And your petitioner shall acknowledge your majesty's justice therein, with due gratitude, and with all alacrity and fidelity endeavour to serve your majesty with his life and fortune, and ever pray for your majesty's long and happy reign.

BANBURY.

This being read, the Lord Chancellor acquainted the House, That his majesty signified his pleasure to him, that no writ should be issued out to summon the earl of Banbury to this parliament, upon some question that was made in this House last parliament, concerning him.

* Perhaps in the original Petition the word "who" was here inserted.

Hereupon it is ordered, That the said Petition, and contents thereof, are hereby referred to the Lords committees for privileges, who having heard the Petitioner by his counsel, or otherwise, and Mr. Attorney-General on the king's behalf, are afterwards to make report thereof to this House, and their lordships to meet when they please.

June 15, 1661.

Upon report of the committee of privileges, that the earl of Banbury desires some witnesses may be examined on his behalf, among whom is the countess of Salisbury, it is ordered, That the committee have hereby power to send for such witnesses as they think fit; observing such decorum as the quality of the person requires: and further, that Mr. Attorney-General do attend that committee on Monday next in the afternoon.

June 20, 1661.

Ordered, That the report from the committee of privileges, concerning the earl of Banbury, shall be made on Friday the 28th of this instant June.

July 1, 1661.

Upon the report this day made, concerning the Petition of Nicholas earl of Banbury, formerly brought into this House by a peer of this realm from his majesty, whereby the petitioner prayeth a writ of summons to this parliament, as earl of Banbury, and to enjoy all the precedencies and privileges thereunto belonging, granted by his majesty's letters patents to the last earl of Banbury; it is ordered, That the cause shall be heard at the bar on Monday, the 8th day of this instant July, by counsel, and witnesses are to attend at the said hearing; at which time, Mr. Attorney-General, and others of his majesty's counsel, (having timely notice given) are likewise to be heard on the King's behalf.

July 9, 1661.

This day the cause of Nicholas earl of Banbury, upon his Petition, wherein he prays a writ of summons to this parliament, as earl of Banbury, and to enjoy all the precedencies and privileges thereunto belonging, granted by his majesty's letters patents to the last earl of Banbury, was heard by counsel on the earl's part; and also Mr. Attorney-General, serjeant Maynard, and serjeant Glynn, counsel on the king's behalf, were heard: and in regard it was now late, it is ordered, That the resolution of this business shall be taken into consideration to-morrow morning.

July 10.

Upon consideration of the business of the earl of Banbury, heard at this bar yesterday, and after a long debate thereof, it is ordered, That the matter now in debate, concerning the earl of Banbury, is referred to the consideration of the committee of privileges; and also

VOL. XII.

the matter of the right of precedency between the said earl of Banbury, and several peers of this realm, and to make report thereof to this House; the committee to meet on Monday next, at three o'clock in the afternoon.

July 19.

The earl of Northampton reported from the committee of privileges, that their lordships have considered of the earl of Banbury's business referred unto them, and their opinion is, That the earl of Banbury is, in the eye of the law, son of the late William, earl of Banbury; the House of Peers should therefore advise the king to send him a writ to come to parliament.

Also their lordships are of opinion, that the earl of Banbury ought to have place in the House of Peers, according to the date of his patent, and not according to the tenor of that part thereof which ranks him before other earls created before William, earl of Banbury. All which the Committee offer to their lordships judgment.

Ordered, That this House will take this report into consideration to-morrow morning.

July 25.

Ordered, That on the second Thursday after the next meeting of this House, after the adjournment, this House will take into consideration the report of the earl of Banbury's business.

Nov. 28, 1661.

The House took into debate the report concerning the earl of Banbury formerly made to this House; and the question being put, Whether to put off the consideration of this business to a further prefixed day? It was resolved in the affirmative.

Dec. 9, 1661.

An Act was read a first time, declaring Nicholas, earl of Banbury, to be illegitimate.

Oct. 26, 1669.

Upon calling of the House of Peers this day, the House taking notice that the earl of Banbury's name is not in the list by which the lords were called, it is ordered, That it be referred to the committee of privileges, to examine why the said earl of Banbury's name is left out of the said list, he having formerly sate as a peer in this House, and to peruse all former proceedings in this House concerning him, and to make report thereof to the House.

Nov. 25, 1669.

The earl of Essex reported to the House, that the committee of privileges, in pursuance of the order of this House, have examined their proceedings concerning the earl of Banbury; the order consisted of two parts, First, Why his lordship's name was left out of the list of the peers, touching which the lords have spoken with sir Edward Walker, principal king of arms, who delivered in the list, and he

produced a book out of the herald's office, where it appears that the last William, earl of Banbury, died in the year 1632, and having had two wives, left no children.

Likewise he produced a roll, being a procedure of the king and the peers to Parliament in 1640, in which list there is no mention of the earl of Banbury's name among the peers.

Upon these grounds the said Edward Walker left out the name of the earl of Banbury in his list given unto this house.

The second part of the order was to present to the house, an account of the former proceedings in this house, concerning the earl of Banbury, and the lords committee find, That June 6, 1661, &c. being a recital of the proceedings before set forth.

February 23, 1669.

A Petition was presented to this house from the earl of Banbury, which was read as follows :

To the Right Honourable the Lords Spiritual and Temporal in Parliament assembled :
The humble PETITION of NICHOLAS, Earl of BANBURY,

Sheweth ; That your humble Petitioner hath the honour to be a peer of this realm by descent, and is legally entitled by right of inheritance, to the dignity and honour of the earl of Banbury, and ought therefore to have and enjoy his voice and seat in parliament, and all other pre-eminences to such dignity belonging ; and hath always, in all taxes, and payments of poll-money, and benevolencies, paid such sums, and in such proportions, as to the quality and degree of an English earl did appertain.

Nevertheless your Petitioner hath not yet had the honour to receive from his majesty such a writ of summons to parliament as is usually granted to other peers of this realm. Wherefore, since your petitioner is well assured that no legal impediment can be objected and proved against him, he most humbly prays this most honourable house, that he may receive such a writ of summons to the parliament now sitting, as may enable him to serve his majesty there, according to the duty of his place and quality. And your Petitioner shall pray, &c.

BANBURY.

Upon this, the House made this order following :

Upon reading the humble petition of Nicholas earl of Banbury this day, praying, that he may receive such a writ of summons to the parliament now sitting, as may enable him to serve his majesty there, according to the duty of his place and quality, it is ordered, That the said petition be referred to the lords committee for privileges, whose lordships having considered thereof, are afterwards to report their opinions to the house.

June 10, 1685.

Upon reading the Petition of a person that claimeth the title of earl of Banbury, it is ordered by the Lords spiritual and temporal in parliament assembled, That it be referred to the lords committee for privileges, to examine all former proceedings of this house, relating to that case, and to report the same to this house.

June 23, 1685.

The earl of Aylesbury reported from the committee of privileges, that their lordships had read the petition of the person that claimeth the title of earl of Banbury, referred by the house to them to examine all former proceedings of the house relating to that cause ; that their lordships find, &c. being a narrative of all proceedings before recited, Whereupon the following order was made :

Upon report from the committee for privileges of the state of proceedings in the journals of this house in the business referred to them, concerning the claim of a person to the title of earl of Banbury, it is ordered by the Lords spiritual and temporal in parliament assembled, That this house will hear his majesty's attorney-general on his majesty's behalf against the said claim, as also counsel for the person who claims the said title of earl of Banbury, on Monday the sixth of July next, at ten of the clock in the forenoon.

December 13, 1692.

Upon reading the Petition of a person that claims the title of earl of Banbury, it is ordered by the Lords spiritual and temporal in parliament assembled, That this house will hear his majesty's attorney-general on his majesty's behalf, and all other persons that may be concerned therein, against the said claim, as also counsel for the person who claims the said title of earl of Banbury, on Monday the 9th day of January next, at ten of the clock in the forenoon, whereof the petitioner is to cause timely notice to be given to his majesty's attorney-general, and all other persons that may be concerned in the said claim.

January 9, 1692.

After hearing counsel this day at the bar, upon the petition of the person that claimeth the title of earl of Banbury, and their majesties attorney general, and debate thereupon, it is ordered by the Lords spiritual and temporal in parliament assembled, That the consideration of this business shall be, and is hereby adjourned to Saturday next at twelve o'clock, and that the two inquisitions taken formerly concerning this case, shall be then brought, and that the heralds do then attend, and bring with them all such papers and evidence as are in their office, relating to this matter, and that their majesties attorney-general be then further heard on their majesties behalf, and all others that may be any wise concerned.

January 14, 1692.

Counsel being called in, and after some time withdrawn, the order following was made:

It is ordered by the Lords spiritual and temporal in parliament assembled, That the officer, who hath the custody of the inquisitions taken after the death of William earl of Banbury, in the counties of Berks and Oxon, do forthwith attend this house with the said inquisitions.

The attorney-general being appointed to attend this day, and not being present when the cause of the person claiming the title of earl of Banbury was to be argued at the bar of this house, the following order was made: It is ordered by the Lords spiritual and temporal in parliament assembled, That an address shall be made to his majesty, that the attorney-general for the time being may attend this house as an assistant, and that it be referred to the lords committee for privileges, to draw the same, and that the committee meet on Tuesday next, at four of the clock in the afternoon.

After hearing this day the heralds at arms, as to the petition of the person that claims the title of earl of Banbury, as also the attorney-general on their majesties behalf, against the said claim, and counsel for the person claiming; it was resolved, upon the question, That the debate thereupon shall be adjourned until Tuesday morning next, the first business.

January 17, 1692.

Then the order of the 14th instant being read for resuming the adjourned debate concerning the petitioner who claims the title of earl of Banbury, and the inquisition formerly taken upon the death of William earl of Banbury being also read, and after debate upon the said claim,

This question was put, Whether all the judges shall be heard in this case?

It was resolved in the negative. Cont. 29. Not Cont. 38.

Dissentient.*

Halifax.	Grey.
Mulgrave.	Carmarthen. P.
Montague.	Huntingdon.
P. Winchester.	Scarsdale.
Marleborough.	Lexington.
Ashburnham.	Lempster.
Manchester.	Godolphin.
Lindsey.	H. London.

* See some matter concerning Protests, vol. 10, p. 233, vol. 11, pp. 306 et seq. [N. B. in vol. 11, p. 307, l. 22, after the word "protests," should be inserted the words "with reasons," and the like insertion should be made after the word "protest," p. 308, l. 36.]

In Debrett's Complete Collection of the Standing Orders of the House of Lords, I find the following particulars respecting Protests:

"Die Sabbati, 5 Martii, 1641.

"Standing Order, 87.

"Ordered by the Lords in Parliament, that such lords as shall make protestation or enter

Then this question was propounded;

Whether the petitioner hath any right to the title of earl of Banbury?

Upon which the previous question was put, whether this question shall be now put?

It was resolved in the affirmative. Cont. 33. Prox. 7. Not Cont. 27. Prox. 2.

Then the main question was put,

Whether the petitioner hath any right to the title of earl of Banbury?

It was resolved in the Negative.

Dissentient.

Halifax.	Carmarthen P.
Mulgrave.	Crewe.
Huntingdon.	Marleborough.
Scarsdale.	Ashburnham.
P. Winchester.	Manchester.
Montague.	Lindsey.
W. Landaff.	Grey.
Tho. Menev'.	H. London.
R. Petriburg.	Godolphin.
Lexington.	Hunsdon.

It is ordered by the Lords spiritual and temporal in parliament assembled, That the Petition presented to this house the 13th of December last, by a person claiming the title of earl of Banbury, shall be, and is hereby dismissed this house.

The ARGUMENTS of the Lord Chief Justice HOLT, and Judge POWELL, in the controverted point of PEERAGE: in the case of the King and Queen against Charles Knowles, otherwise earl of Banbury.

The KING and QUEEN against CHARLES KNOWLES, otherwise the Earl of BANBURY.

He was indicted at the Old-Bailey of murder, and removed the indictment by Certiorari into the King's-bench, and there pleaded an abatement of the indictment, that he being indicted by the name of Charles Knowles, esq. at the time of the taking of the indictment, was earl of Banbury, and ought to have been indicted

their dissents to any votes of this House as they have a right to do without asking leave of the House, either with or without their Reasons, shall make their said Protestation, or give direction to have their dissents entered into the Clerk's Book the next sitting day of this House, or else the said Protestation or dissent to be void and of none effect." Emendat, 22 Junii, 1715.

"Die Martis, 24 Februarii, 1721, N^o 114.

"Ordered, That such lords as shall make Protestation or enter their dissents, to any votes of this House, as they have a right to do, without asking leave of the House, either with or without their Reasons, shall cause their protestation, or dissents, to be entered in the Clerk's Book, the next sitting day of this House, before the hour of two o'clock, otherwise the same shall not be entered, and shall sign the same before the rising of the House the same day." Ent. per Ord. 3 Martii, 1721.

by that name,* and by his plea intitles himself to that dignity, under Edward late earl of Banbury, whom he alledgeth to be seized, and being seized 'obiit inde Seisitus,' but omitted in the plea 'sine Herede Masculo de Corpore suo exind,' he making his title on failure of issue male of Edward. Then in another part of his plea it is alledged, 'Per quod idem Carolus fuit et adhuc existit Seisitus, omitting, 'Tempore Captionis Indictamenti predict,' the attorney-general had replied to the plea: But before any other thing done, or the plea, or replication entered on record, the defendant's counsel moved they might have leave to amend their plea in the particulars before-mentioned. The chief justice Holt, my brother Dolben, and myself, being only in court, and taking time to consider of it, my brother Dolben, and myself, delivered our opinions, that he might amend it; and my reasons were, that many amendments had been made in criminal matters by the court, as appears by sir John Curson's case, 2 Cr. 529. and Rolls 2 Rep. 59. Delvridge's case, Siderf. 243, 225. and Car. Cr. 144. And that none of these amendments could be made by force of any of the statutes of Jeofailes, none of them extending to any criminal cause, or other causes wherein the king is a party; as an information of instruction, or Quo Warranto, Car. Cr. 312. the king against Sherington Talbot; and therefore those amendments must be made by the warrant of the common law; and if the common law warrants any amendments in criminal matters, certainly while matters are *in Fieri*, and in the court by pleadings, in order to bring them before the court for judgment, before they are entered on record, the court may give the party leave to amend, as well in criminal causes as civil, before the matters are completed and entered on record. And I said, I could see no difference, in that the pleadings in the civil-side were brought into the office in paper; and in the crown-side, in treason, or felony, they were brought into the office in parchment. For to say it is all paper, in order to induce the court to allow the amendments, is but a phrase used to signify to the court that nothing is entered on record; and until then the court hath power over what is agitated there to allow reasonable amendments, in order to bring the matter before the court, and relied on the case of the attorney-general against Trinity-house; Siderf. fol. 54. But the chief-justice was *totis viribus* against the amendments, saying, it was never done but by reason of our opinions.

The KING and QUEEN against KNOWLES.

The defendant stands indicted by the name of Charles Knowles, esq. for the murder of Philip Lawson, who comes and pleads in abatement of this indictment, that king Charles the 1st, by his letters patent, under the great seal of Great Britain, dated the 18th of August, in

the second year of his reign, which he shews to the court, did create William, then viscount Wallingford, earl of Banbury, to hold to him, and the heirs-males of his body; by virtue of which letters patent he was seized of the honour in his demesne, as of fee-taile, and being so seized, died thereof seized; after whose death, the honour of the earl of Banbury descended to Edward Knowles, as heir male of his body; who afterwards died seized of that honour without heir-male of his body; after whose death, the honour descended to Nicholas Knowles, brother of the said Edward Knowles, as heir-male of the body of William, whereby he became earl of Banbury; and being so seized of that honour, the said Nicholas died thereof seized, whereby the honour descended to the defendant, Charles Knowles, as heir-male of the body of Nicholas, whereby he is seized of the honour in fee-taile to him, and the heirs-males of his body; and concludes, *et hoc parat est verificare*; and demands the judgment of the court, whether he ought to answer to the indictment, not being indicted by the name of earl of Banbury. To which plea the king's attorney hath replied, that the defendant, by the name of earl of Banbury, did exhibit a petition to the lords spiritual and temporal in parliament assembled, thereby alledging and pretending, that, by right of inheritance, he was earl of Banbury, and one of the peers, and was indicted for the death of Lawson, and prayed he might be tried by his peers: and that 'talitur superinde processum fuit;' that by the said lords spiritual and temporal, 'secundum legem et consuetudinem parliamenti resolutem, consideratum, et ordinatum fuit,' that the defendant, Charles Knowles, had not any right to the titles and honours of earl of Banbury, and that his petition should stand dismissed; whereupon the defendant demurs. And I am of opinion that judgment in this case ought to be given for the defendant, and that his plea is good, and no ways avoided by the replication; there having been two exceptions taken by the king's counsel against the plea, which I shall first answer, before I speak to the matter of the replication. The first is, That the defendant hath concluded his plea with *hoc parat est verificare*, and not *per recordum*; whereas peerage can no way be tried but by matter of record, which is most true, that peerage by creation is triable only by record, but it is a *non sequitur*, that therefore his plea ought to conclude with a *verificare per recordum*; and indeed the plea which now is good, had been bad, if it had so concluded; for he having pleaded his letters patent of peerage to his ancestor, under whom he derives his honour with a *profert in cur*, he hath sufficiently certified the foundation of his peerage by matter of record, he being a complete nobleman by his creation, by his letters patent, without any other ceremonies, as appears by Penson and Redhead's case, Noy, 150. Inst. 16. G. 10. the 12 Rep. 71. And if he be to be arraigned after such creation, and before the parliament sits, he shall be tried by his

* See Couch v. Lord Arundel, 3 East, 127. See too p. 653 of this Vol. lord Preston's case.

peers. And where letters patent are pleaded and shewn to the court under the great seal, the adverse party cannot deny them, nor plead *nul tiel record*, Eden's case in the 6th report, and need not conclude with a *verificare per recordum*, for he cannot have a day to bring in the record which he hath already shewn to the court, besides the descent of Edward to the honour, his dying without issue, whereby it came to Nicholas; and his death, and the descent to the defendant pleaded, after the letters patent set forth, are all matters of fact, triable by the country, and not by the record, by reason whereof he could not so conclude his plea, there being no authority in law to warrant the conceit of the king's counsel, that there must be a writ out of chancery under the great seal, certifying all these matters the defendant hath pleaded to make out his peerage, the books cited by them no ways warranting that opinion; for the books of 35 Hen. 6, 46. No. 3. 165, and 347. Reg. 287. Dyer, 314. 48 Edw. 3, 30, 48 Ass. Pl. 6. and 4 Inst. 126, are all writs of Privilege, or Cautionary Writs, as may be seen in the lord Savile's case, Car. Croke, 205. not to put peers in Juries, or make other process against them than by the law ought to be, and nothing to the purpose. And the books of 22 Assize Pl. 24. which is abridged in Br. sit' Ass. 240. which gives the greatest umbrage. So this opinion makes out no more but that peerage is triable by record, and not by jury; for it is plain the plea there pleaded in abatement was ill, that he was the son of an earl, and not named earl; for the foundation and substance of his plea being a matter of record, ought to have been certainly alledged by him, 1 Inst. 303. And he ought to have began his plea in his ancestor nobilitated by the matter of record, and then deduced his descent under him, which caused the saying there, 'That Peerage was not triable by the assizes, but by the record out of Chancery.' And it is plain from that book, the plea was not allowed; for they did plead over to the assize: so how this can be made an authority, that a writ must be had out of Chancery, certifying all these matters of fact, and that they must be so said, I do not understand. My lord Coke, in his 1 Inst. 74. tells us of six manners of trial by certificate, of which I am sure this is none: neither is there any such writ or precedent of such a trial to be found in any of our law-books, of which a certificate by writ appears; and writs being, as Fitz-Herbert tells us in the preface to his Natara Brevium, the foundation on which the law depends. If there be no such writ, we may safely conclude there is no such law; and it is evident by 1 Inst. 16. and the countess of Rutland's case in the sixth report, that nobility may be gained by matter in fact, as marriage, as well as by creation and inheritance. Nobility may be also gained by descent after creation; which descent and marriage are matters of fact, and triable by jury, as is held in the 6th Report 53. and therefore the plea here well concluded, and is good, notwithstanding the

exception. Neither is the other exception, which hath been taken to the plea, of more weight; which is, that it doth not appear by the defendant's plea he is a peer, the defendant having not pleaded his *unus pariu' hujus Regni Angliæ*, nor averred Banbury to be in any county of England; which, I think, he need not to do, and that it is now better pleaded than if it had been so pleaded; for he hath by his plea certainly pleaded the letters patent of creation to his ancestor under the great seal of England, whereby he was made earl of Banbury, and shews them to the court; and being nobilitated under the great seal of England, he is a peer of England, though the place from which he has his name of honour be not in England, but in a foreign country; for, that a lord hath the name of a place in his style, is of no further necessity than that the patentee might have an estate in his honour within the statute *de Donis*, which, without such a name, would be a fee-simple conditional, 22 Rep. 81. 7 Rep. 33. Nevil's case. And I believe no patent of creation of an earl can be shewn, wherein the name of honour is mentioned in the patent to be in any county: of Barons, there are some in which the place is named to be in such a county, but very many are otherwise, which shews it not necessary. But I must agree that an Irish peer must be created under the great seal of England; but then they are distinguished from English creations by 'in Terra,' or 'in Regno,' or 'in Domino nostro Hiberniæ,' or the like, in due places of the patent, Selden's Titles of Honour, 696. Pryn's Animadversions, 316. which makes the distinction: for, without those words, it would be an English creation passing the great seal; and though this be in a plea in abatement, which requires a certainty, yet that certainty is to be but to a certain intent in general, 1 Inst. 303. And if noblemen made under the great seal of England, are generally to be intended peers of England, then this plea, so pleaded, contains in it sufficient certainty without other averment, or the precise words of 'unus parium.' It is true, had a bishop, who is a peer 'ratione baroniz,' which he holds in 'jure ecclesiæ,' had occasion to have pleaded such a plea, or a plea to the jurisdiction of the court, he must have pleaded his peerage in that manner that he is 'unus de paribus Regni;' for he hath no letters patent to plead, 4 Inst. 15. But he who is a peer 'ratione nobilitatis,' needs not plead his peerage otherwise than according to his creation. So that the defendant's plea, notwithstanding these objections to it, I hold good.

The next thing to be considered is, whether the replication to it doth any ways avoid it; which is no more, but whether this vote, judgment, or order of the House of Peers, for in all the words of it, it is pleaded 'resolutum, consideratum, et ordinatum fuit,' (and I would take it in its largest extent the matter itself will bear) doth any ways take away or barr the defendant of his name of dignity. And I am of

opinion it doth not. Nobility is fixed to the identity of the person, and inherent in the blood nobilitated by the king, and cannot be granted over or barr'd by him who hath it, as is held in Jones's Rep. 116, and the 4th Inst. 126, and resolved in parliament in my lord Purbeck's cases, Shower's cases in parliament, pag. 1. And if it be an honour of inheritance, the heir of the peer on whom it descends cannot waive it, or the privilege of it as to be tried by his peers, and is so held in the lord Delaware's case in 11 Rep. and 3 Inst. 30. And as a peer cannot divest himself of his own honour, or the privilege of it, so his peerage can by no law of this kingdom, as I know, be taken from him, but by act of parliament, attainder of his person, or by the *scire facias*, to repeal his patent, if the creation is by letters patent; for where the creation is by letters patent, they being once under seal, the king cannot countermand them, as is held in the lord Abergavenny's case, 12 Rep. 71, though where he is designed to be ennobled by writ, the king may supersede the writ after it is under seal, and before the parliament; but letters patent under the great seal are a conveyance at the common law, and the patentee hath an interest settled in him in things thereby granted, which is to be directed and governed by the rules of law; and therefore a peer, if he be created by letters patent, his estate of inheritance in those patents must be limited by apt words, or else the grant will be void; because it is settled in him, and by a conveyance at the common law, as is held 1 Inst. 16.

And, by such a creation, an honour may be entailed within the statute Westm. 2, and the descent of it is to be governed according to the rules of the common law; and it is resolved to be an hereditament forfeitable for treason within 26 H. 8, Nevill's case, 7 Rep. 34, and therefore the defendant having by his plea entitled himself to an estate taile in this honour, under the letters patent to viscount Wallingford, and the heirs males of his body, as a lineal descendant under that intail, hath a freehold and inheritance in that honour vested in him by common law, to be protected in it, and governed according to the rules of law; and cannot be disinherited, or debarred of it by the known laws of the kingdom, unless it be '*judicium parium*,' or '*per legem terræ*,' which my lord Coke in his 2 Inst. fol. 49 and 50, says, is by due process of law, or lawful trial in course of judicature, on neither of which is this vote or order founded. For though the House of Peers be a supreme court of record, yet every vote there passed is not an act of judicature, unless the proceedings in order to it had been judicial; which in this case, I think, is pretty clear they were not: For the defendant's petition to be tried, being indicted of felony, could give them no jurisdiction over his peerage; and as a House of Peers, I take it, have no such power, unless the king, on a petition, refers the matter to them, which gives them a jurisdiction, which before they had not. And this ap-

pears by the lord Delaware's case in the 11 Rep. And the lord Willoughby's and the earl of Oxford's case, in Jones's Rep. 96, and the other precedents cited by my brother Levinz of my lord Abergavenny's, the lord Purbeck's, the lord Fitzwalter's, * the lord Berkley's, the lady Obrian's, the lady Frescheivill's, and the lady Felton's cases, which were all determined by the king's reference on their petitions to him in the House of Peers: For the king, being the fountain of honour from whence all dignities are derived (for none can be a peer without the king's creation, or his consent by act of parliament; for it is held in Jones's Rep. 104, an ordinance of the House of Lords cannot make a peer), the king hath an interest in the person so dignified for his council in peace, and defence in war, as appears in the 7th Rep. 34, and 9 Rep. 49. And by reason of his great trust and confidence, the honour cannot be taken from the peer, or transferred by him, being an incident inseparable to him, without the king's consent; 12 Rep. 28, 4 Inst. 126, and by the common law, the king having a prerogative to try his cause in what court he pleases, 4 Inst. 17, when a petition is exhibited to him for any right the subject pretends to, be it peerage, or other thing, the king may indorse that petition as he pleaseth; which indorsement the party must pursue, for the indorsement is the warrant, and gives the jurisdiction: Stanford's Prerogative, 738. Therefore without such reference, by indorsement of a petition, they can have no jurisdiction; for then peerage might be taken away without the king's consent, which by law I have proved it cannot be: And no precedent hath been cited, nor I believe can be found, where the House of Lords did ever take on them to determine right of peerage without such reference on a petition first made to the king, or did vote or adjudge a man to have no right to his peerage, who petitioned to be tried by his peers; and, where there is no example, nor precedent, it is a forceable argument that the law will not bear it, for what never has been done shall be presumed never could be done: I must agree that the House of Peers have jurisdiction over their own members in matters of privilege, precedence, and for any other thing relating to the parliament, which are to be determined '*secundum legem et consuetudinem parliamenti*,' but not by the common law, 4 Inst. 15, and 363. But over the estates or honours of their own members, in which they have freeholds and inheritance, no law, as I know, has given them power; nor made them any judicature for that purpose, they being to be determined and governed by the known rules of the com-

* "See these Cases in a book, entituled, 'Proceedings, Precedents, and Arguments on 'Claims and Controversies about Baronies by 'Writ, and other Honours.' Fol. printed 1734."—Former Edition.

Most of these Cases are briefly stated in Mr. Cruise's learned Treatise on Dignities.

mon law, which is every subject's birth-right, and to which he is born inheritable; and by any other law or custom, though the House of Lords be the supreme court of record in the kingdom, and its jurisdictions, and the methods of its proceedings are ascertained by that law; and therefore though it were ordered in the Lords' House, that those who were sent justices to Ireland should have no excuse; yet that being but an order, was void to bind the subject, 2 Inst. 47. And, I hope, it can be no diminution of the power of that honourable House, whilst I affirm they can do in that supreme court no more than what by law they may do; and if they exceed that power by holding plea, of which the common law hath not given a jurisdiction, what they do will be void, and of void things all persons may take advantage. And no such judgment or proceeding can bind any inferior court from examining of it, or declaring it to be void in law; for suppose a writ of error was brought in the House of Lords of a judgment given in the common pleas, as was attempted by the bishop of Norwich in Edward 3rd's time, which you may see in the 4 Inst. 31, and the Lords should reverse such judgment, might not the common pleas, though they are an inferior court, judge it to be void, and issue an execution on that judgment, the reversal being void, no writ of error lying in parliament of any such judgment? And if this be a judgment or binding order, which is set out in the replication, that the defendant hath no right to the title or honour of earl of Banbury: One or both of these two things must be wrought by it, viz. The patent of creation vacated and damned, or the defendant, or some under whom he derives his descent to this honour illegitimated, neither of which can be done by this method of proceedings in this supreme court on the defendant's petition to be tried: for the letters patent being a conveyance at the common law, the patentee is entitled to the thing thereby granted by matter of record, which cannot be vacated but by a *Scire Facias* at the suit of the king, to which the patentee may have his answer, Dyer 198. For our law judgeth no man before he be heard; and the defendant, or any other of the descendants in the estate taile to their honour, cannot in this summary way by a vote be bastardized without a lawful trial; which in general bastardy must be by certificate of the ordinary; or in particular bastardy alledged, it must be tried by jury, 2 Inst. 99. Sir John Davies, Rep. 52. And no man by the law can by any means, unless by act of parliament, be made illegitimate after his death, 1 Inst. 244, and it would be of mischievous consequence to the noble peers, did they hold their honour in which they have freeholds and inheritances, subject to a law differing from the known laws of the kingdom, which law is, as Mr. Attorney phraseth it, 'inter arcana Imperii;' and not to be understood by inferior courts of Westminster-hall, for then, I fear, they would have but a dark title to their honours. And as it is the

defendant's turn at present, what nobleman's case it may be next to be voted no peer, I know not; therefore it being the interest and title of every peer to his honour, which I here assert and maintain, I trust I shall not offend against the jurisdiction of that house, in adjudging this order void, and no bar to the defendant's honour, being warranted so to do by the supremest power; viz. an act of parliament 55 Edw. 3, which enacts, That none be put out of his franchises or freeholds, unless he be duly brought in to answer, and forejudged of the same by course of law; and if any thing be done to the contrary, it shall be judged for none: and if the peers enjoy their honours under the security of the same laws they hold their estates, as it is most evident they do, then this law has made the proceedings void, unless it can be shewn that the House of Peers since this act hath some authority given them to warrant this vote, which hath not yet been pretended to, otherwise than by the precedents cited by Mr. Attorney; to which I shall give an answer presently; and to say that the demurrer is a confession, that there is a judgment 'Secundum Legem et Consuetudinem Parliamenti,' I never heard that a demurrer was a confessal of more than matters of fact well pleaded, and not of any matters of law in the judgment of the court, and confesseth not the law by it against himself, Plowd. 85. 5 Rep. 69. Burton's case; and, I presume, neither Mr. Attorney, nor Solicitor, who made this objection, do think that: Whether this be a judgment according to law and custom of parliament, is matter of fact: then for the precedents cited by Mr. Attorney, of the earl of Pembroke, the earl of Stafford, the earl of Torrington, and the lord Mohun's cases, which are all petitions for trial, sitting the parliament, I think no man who heard them can judge that they any ways warrant this case or come up to it; for a peer, indicted for treason or felony, can no ways wave his trial by his peers, 3 Inst. 30, and therefore if he be desirous to be tried sitting the parliament, although the peers be during the time of parliament judges of the offence, 4 Inst. 28, it is decent and usual for him, to apply to them by petition for such trial; but by it he doth not submit his title to peerage to their determination; for, that, he asserts, he is entitled to by his petition. Neither is the king, I think, bound by their order, be it what it will, on such petition; for the king may chuse whether he will appoint a high-steward for the trial, and without such an appointment the offender cannot be tried, 3 Inst. 31. And therefore until a precedent be formed, that on such petitions for trial, the petitioners have been voted no peers, I cannot be of opinion, that this order or judgment is 'secundum Legem et Consuetudinem Parliamenti,' which hath its foundation built on usages and precedents; and where there is no precedent to be found, it may warrantably be concluded, there is no such law or custom of parliament. Then as to the precedent of the lord Mountjoy's case,

cited by Mr. Attorney, relating to the clause in his patent for precedency, who was created a baron, 5 Inst. 3. case, Pri. it is nothing to the case before us; for it is plain, though the king by his prerogative, at the common law, might give precedency to his subjects as he pleased, yet that prerogative is now bound by the stat. of 31 Hen. 8, ca. 10, and if any question be moved in parliament for the privilege or precedency of a lord in parliament, it is to be decided by the lords in parliament, and so it is expressly resolved in the 4 Inst. 363. And for the lord Preston's case, I know not how it comes to be made use of for a precedent of determining peerage, who had no creation under the great seal, nor ever was a lord: his insisting on the pretended patent, produced by him, being a high misdemeanor bordering on high-treason; for which he was ordered to be presented as a criminal, in a course of law; and for James Piercy's* case, it was a case of privilege, of which there is no question but their lordships have a jurisdiction, his petition being to the place in the House of Lords of the earl of Northumberland, and submitting to them his pedigree, and title by descent to that earldom, in order to restore him to that place; and after several trials at law had against him, and the matter determined in a course of law, on solemn hearing at the bar of the House on both sides, on depositions taken in the cause, agitated in inferior courts, they voted him an impostor, which is very far from being a precedent of their lordships original determining right of peerage, which are all the precedents which have been cited, and unto which I trust that I have given full answer; and therefore this order, here pleaded, being without a precedent, I am of opinion, for the reasons I have given, that the indictment ought to be abated.

Holt, the chief justice, held the plea good, the defendant having pleaded the creation of the lords his ancestors, and a plain descent under them: and for the earldom, that Banbury was averred to be in England, he said, it was needless, the creation being under the Great Seal; the Great Seal of England being only peculiar to England, for thereby the king acts as king; and had the grant been made before the conquest of Ireland, without doubt it had been a good grant; and the conquest of Ireland cannot alter the law of England; besides, it would be a foreign construction, to

* "This James Piercy was a trunk-maker in the Strand, and published his Case and Pedigree in about 24 pages in folio; one of his Arguments to make you believe him a true descendant of the Piercys, was, That he was born with a mole on his body (as other of the Piercys had been) like a half-moon. Vide his Case, p. 16. The crescent being the crest of the Piercys, earls of Northumberland." Former Edition.

As to this Percy or Piercy, see 12 Lords' Journ. 553. 578: 14 Lords' Journ. 34. 38. 224. 240.

intend Banbury in Ireland; and a plea shall not be made had by such a construction.

And that the king doth grant honours in Ireland, under the Great Seal of England, is by his absolute prerogative, and therefore there must be special words in the patent, to shew that it is an Irish title; and patents, as well as acts of parliament, extend not to Ireland, unless it be specially named; but for England, they be without any such meaning. And he said, that before Edward the third's time, there were but two titles of honour, earls and barons, and the latter were created by writs, by being called to the parliament; there were also barons by tenure, and after, in Richard the second's time; they came to be created by letters patent, and it was anciently an office of great dignity, as also of trust, for the defence of the kingdom; and they were called Comites a Societate regis, 9 Rep. 49, and being an office, might be intailed within the statute de Donis, and they had formerly large possessions; and for the relief of an earl, was 100*l*. because he died seized De integro Comit'. 1 Inst. 83. But the estate and office is now vanished, and nothing but the dignity, or title remains; and in these letters patent of creation, in Henry the eighth's time, the words to have 'Vocem et Sedem in Parliamentis et Consiliis nostris' were added; but before that time they were not put in these letters patent; but he became a perfect peer by the letters patent without them: and as to the objection, that the defendant had not pleaded that he was 'unus Parium hujus Regni Angliæ,' he said, the plea was only pleaded as Misnomer, in abatement of his name; and all one with his Christian name, and he was to be named by it; but by this plea he pleaded no privilege of parliament, and therefore need not plead that he was unus Parium, 6 Rep. 53, 8 Hen. 6, 9, 10, nor to have concluded his plea with 'verificare per Recordum,' or had a writ out of chancery to certify the truth of this plea; the book of 22 Ass. Pl. 24, he agreed it to be law, but misunderstood; for he had not in that plea laid a foundation in his ancestor's being made lord; and produced a writ to ascertain that matter of record: There can be no trial of it, nor plea of Nul Tiel Record to it. But notwithstanding the matters of record are so ascertained, yet the matters of fact also pleaded are issuable, and to be tried; and therefore in the letters patent, being here pleaded, there can be no issue taken of earl, or not earl, but only on the matter of fact here pleaded: so the conclusion of the plea with a 'Parat' est verificare,' is proper, and as it ought to conclude; and he held the replication ill, and that the order of the House of Lords therein pleaded, did no ways preclude the defendant of his title and name of honour; and that for these reasons: First, Because this determination was not a judgment, in the court of parliament, which consists of King, Lords, and Commons, 4 Inst. 1 Dyer, 60. Compton's Jurisdiction of Courts, 1. And though the judicial power of

this court be exercised by the Lords Reply, yet the Writs of Error are returnable Coram Nobis, and the judgment is always per Cur' Parliamenti; but the determination here is only by the lords spiritual and temporal, which excludes the king; for where the king's authority is not expressed, or implied, the king is excluded, and the Lords have a double capacity; and by the title of their orders, we are to distinguish what capacity they act by: when the determination is by them, as lords spiritual and temporal, they act as a house; but when they act as judges, and give judgment, the stile is, per Cur' Parliamenti, and their journals are not the records of parliament, Hob. 110. Secondly, This, as to the determination of the defendant's being an earl, is as an original cause, which the House of Peers being the dernier resort, have no connuzance of, such causes being mixed with many matters of fact which the House of Peers cannot try; and by reason of their supreme jurisdiction, are not to be troubled with; and therefore no Writ of Error lies in parliament for an error in fact out of this court, though it doth on all judgments here for any error in law: but for any error in fact, in this court, the writ must be Coram Nobis, and we are to correct our own judgments for such errors, which the Commons could not their judgment for errors in fact, by any such writ to be brought before them; but the Writ of Error is to be brought into this court; and he said, he knew not any other reason of the difference, but the dignity and supremacy of the court of parliament; that it was below that house to be troubled with facts, and this lessened not the jurisdiction of the Lords, it being below their jurisdiction to hold plea of it; and should they try causes original, the party against whom sentence is given would lose the benefit of his appeal; for from their determination no appeal or review lies; and therefore in the earl of Macclesfield's case, it was held, that no Writ of Error lay in parliament, until he had first brought a Writ of Error in the exchequer-chamber; and this case differs not from common, the dignity being created under the Great Seal, and the descent of it directed by rules of law: and if the defendant had been obstructed in the enjoyment of his dignity, his remedy had been by petition to the king, Standford, Prer' 72. Thirdly, There was no plea depending in parliament, containing the right of earldom; for the petition asserts, he was an earl, and the judgment is, that he hath no title to the honour; and every judgment must be proportionable to the demand: and it is plain in this case, they could not have given judgment for him, to have had the earldom, and therefore could not by it have him out of it. Fourthly, Here is no judgment given that he be excluded from the honour, only that the petition be dismissed, which is only a discharging the petitioner; and every suit must have its proper judgment, 2 Car. 284, and no man's inheritance was ever determined 'Secundum Legem et Consuetu-

'dinem Parliamenti.' And my brother Gregory, and my brother Eyre, being of the same opinion, judgment by the whole court was given for the defendant.

And the Defendant remains untried to this day.

See S. C. 1 Salk. 47. 2 Salk. 509. 3 Salk. 242. Comb. 273. Carth. 297. Skin. 336. 517. 12 Mod. 55. Trem. 11. 1 Ld. Raym. 10. 8. The best reports of the Case are those of Skinner and lord Raymond: the former of which concludes thus:

"Lord Holt having spoke upon the four points which he considered upon the Replication, proceeded to consider the allegation, that this judgment was *secundum legem et consuetudinem*, and as to this he said, that he did not know any reason for this allegation, which the king's counsel had inserted, if it was not to frighten the judges; but he said that he did not regard it, for though he had all respect and deference for that honourable body, yet he sat there to administer justice according to the law of the land, and according to his oath, and that he ought not to regard any thing but the discharge of his duty; and as to the law and custom of parliament for the determination of inheritances, he knew not any but the common law of England, the which is the birth-right of every Englishman; and he would be glad to be satisfied by any man if there be any such custom and law of parliament, where it is, for a custom ought to consist in usage, and he desired to see the precedents of such judgments; and as to the law of parliament he did not know of any such law, and every law which binds the subjects of this realm ought to be either the common law and usage of the realm, or act of parliament. 'Nec super eum ibimus, nec super eum mittemus nisi per legale iudicium parium suorum, aut per legem terræ;' and therefore the Earl of Banbury cannot be ousted of his dignity but by attainder, or act of parliament, or a judgment in a Scire Facias upon his patent, but if there was any such law and custom of parliament [the which Mr. Attorney said was *inter arcana imperii*, which is a strange notion of a law, though it may be good in politics; and for which the lords would not thank him, when they considered that the law which governs the inheritance of their dignities is *inter arcana*, for 'misera est servitus ubi jus est vagum et incertum'] yet, when this comes incidently in question before them, they ought to adjudge and intermeddle with it, and they adjudge things of as high a nature every day, for they construe and expound acts of parliament, and adjudge them to be void, they discharge men committed by parliament, upon a prorogation, they adjudge of privilege of parliament, and instanced in the case of sir George Binion, and sir John Evelyn in C. B. [see vol. 6, p. 1126] where the question was, if the filing of an original during a session, against a member, be a breach of privilege,

and adjudged no breach; and he said that they did but march in the steps of their predecessors, who have adjudged and determined of matters of as high a nature as this, and he cited the case out of an Oxford manuscript, where upon a counter-plea of voucher, the court of C. B. was divided in opinion, and upon this there was an order by the Lords that they should adjudge the counter-plea good, but when this order came into C. B. Parning, Chief Justice, refused to give judgment, but Chard, in his absence, took an opportunity and gave judgment, upon which a Writ of Error was brought, and all this matter shewn in B. R. and that there was an order by the Lords, &c. but the court did not regard it, but reversed the judgment, and he said that the Journal of the Lords is not any record, but notes and memorials for the clerks to perfect and enter the record, and cited Hobart; and so the judgment which they have shewn in their replication is not any judgment or determination in parliament; and if it was, yet it is in an original cause of which they have not consance, and of a matter which was not submitted, or before them for their determination, and they have not given any judgment, by which he shall be barred or excluded from his peerage; and he having made a good title in his plea, the which is not answered or avoided by the replication, it appears that he is a peer, and ought to be indicted by his proper name, scil. Charles earl of Banbury; and being indicted by the name of Charles Knollys, esq. this is a misnomer, for which the indictment ought to be abated; and therefore he ruled that it be abated.

“The other justices argued to the same purpose, though not so particularly; and it was, *inter alia*, said by them that the Lords can only do that which they can do by law; and if they exceed their authority their proceedings are void; and of a thing which is void, every man may take advantage.”

Note: in 7 Mod. 15 (Prideaux v. Morrice) the court is represented to have said, “As to the Case of the earl of Banbury, where the court of Queen’s-bench did determine the right of peerage, the answer is, That cause is not a precedent and not to be followed, for the consequence of it is a failure of justice to this day.”

Mr. Hargrave notices this Case in his learned Preface to Lord Hale’s Treatise on the Jurisdiction of the Lords’ House of Parliament. After briefly stating the pleadings, he thus proceeds:

“The King’s-bench was put to decide upon the effect of the order of the Lords in point of conclusion; that is, whether it ought to operate as the judgment of a court competent by their decision to estop the claimant from asserting his claim to the peerage elsewhere. It was a delicate subject for the court; and they appear to have so considered it, and to have had

it upon their hands for so considerable a time, as caused the House of Lords to enquire into the reason. At length the court unanimously decided against the sufficiency of the replication; and lord chief justice Holt more particularly delivered his sentiments on the occasion in a very courageous and learned manner. The great principle of the decision was, that the order of the Lords was not a judgment. The reasons, upon which the quality of a judgment was denied to their order, were not a little pertinent to the contest about parliamentary judicature: for they included the position, that the House of Lords is not a court of original jurisdiction; and that even their appellant jurisdiction over law, as being founded on the King’s Writ of Error, is derivative from the crown. The principle therefore of this noted decision is, not only a direct denial of one great portion of the jurisdiction claimed by the Lords; but founds another great portion of their judicature, upon a title far less proud and independent than themselves, or at least the chief writers in support of their pretensions, have usually plumed themselves upon. At the same time, it might seem partial, not to mention, that the Court of King’s-bench, thus disowning the Lords as an original judicature, and thus as it were humbling them as an appellant one over law into royal commissioners, was exceedingly bountiful in some other respects. At least the printed Notes of lord chief justice Holt’s argument so state the matter: for according to them, he treated the Lords as if they were the supreme judicature of the kingdom, and as if the sole judicature of parliament was substantially and in point of actual exercise in their body. The manly character of lord chief justice Holt renders it difficult to suppose, that such language could come from him, to pacify those to whom it was plain the Court’s judgment would be offensive. Yet if he did state the Lords to be the dernier resort, and to have the sole judicature of parliament, and in so doing meant any thing beyond that verbiage of complimentary stile, which even in his time had somehow or other grown into a sort of fashion amongst those who addressed or spoke of them, it may not perhaps be too much to say, that such vast concession was, not only very extra-judicial, but very oblivious both of the recent opinions of lord chief justice Hale and others of the first description of Westminster Hall, and of the recent contests between the two houses about judicature. Nay, it may be doubted, whether this extra-judicial language, if it was really meant to convey an opinion, was not of a tendency destructive of the very principle, upon which the judgment of the court was founded. In that view also the decision would lose some little portion of its weight. However it should seem, that even the House of Lords did not so consider this manner of mentioning them. Had they so done, it would scarce have happened, that they should have seriously complained: for in that view, if their

judicative power was depressed, it was also exalted. But in fact they treated the whole proceeding as if it was very hostile to them. Before the judgment, they ordered the attorney general to give an account of the business; and upon his report ordered the judges of the King's-bench to attend. After the judgment, the attorney general was called upon in like manner, and the Lords ordered the King's-bench record to be brought before them. It appears also, that lord chief justice Holt was called upon to give the reasons of the judgment to the Lords; but that he resolutely refused yielding to this extra-judicial question; and that after some threats of further steps the business was dropped."

"What followed upon this case of Charles Knollis esquire claiming to be earl of Banbury and viscount Wallingford deserves attention. The criminal prosecution of him was not further proceeded in; the crown neither chusing to try the judgment upon a Writ of Error, nor to give way to the claim of peerage by having him indicted by the title of earl of Banbury. On the other hand he persevered in his pretensions to the titles, and always assumed the title of earl.

"In 1697, his claim was so far listened to, that his petition of claim was referred by the crown to the House of Lords: and thence perhaps it may be presumed, that the case had been laid before the king's attorney general or solicitor general, and that the report of that officer was not wholly unfavourable to the claimant. But notwithstanding this regal call upon the Lords to exercise their consultive function, they were inflexible; and instead of examining the justice of the claim, they referred it to a committee to draw a representation of the former proceedings of the House in order to have it presented to the king. The Lords Committees made their report: and after reading it and hearing lord chief justice Holt and judge Eyre, there was a debate. But it ended with an order, adjourning the matter for four days, and directing the two judges of the King's-bench and one judge of each of the other courts to attend on the adjourned day. Yet when the latter day came nothing was done. Thus the proceeding terminated in the House of Lords, without either their acting upon the reference from the crown, or their condescending to inform the crown of the reason of so declining to perform their function. See Journ. Dom. Proc. 26 and 29 Jan. and 7 and 10 Feb. 1697-8. Such a declining of the case was the more extraordinary, as very striking circumstances concurred in favour of the claim.

"The question upon it was, whether Nicholas Knollis the father of the claimant was really the son of William Knollis the first earl of Banbury.

"Against the claim in this respect, the circumstances stated are, the great age of the first earl, being between eighty and ninety at

the birth of the claimant's father;—the character and suspicious conduct of the first earl's second wife, the mother of Nicholas Knollis;—an office finding the first earl's death without issue, with some paper of the mother, in the nature of a certificate or acknowledgment, as it should seem, that the claimant's father and his elder brother who died without issue were not the children of the first earl;—and a resolution of the Lords against the pretension of Charles Knollis the claimant in 1692-3. See 2 and 3 Dugdale's Baronage 413, and Journ. Dom. Proc. 17 Jan. 1692-3.

"On the other hand the claim had many things to sustain it.

"1. There was the evidence of the birth of the claimant's father and of the father's elder brother in the lifetime of the first earl, and of the first earl's cohabiting with the countess, his second and last wife, and of his being well enough to ride abroad hawking and hunting: and to prove this four witnesses appear to have been examined.

"2. The office finding the first earl's death without issue was encountered by a second office finding the contrary.

"3. The claimant's father was allowed to take his seat in the Convention Parliament, and to continue sitting for some months without objection; and when objection was taken, it went off without hearing. See Journ. Dom. Proc. 13 July 1660.

"4. The claimant's father, finding himself not summoned, petitioned the king for a writ of summons; and the king referred it to the Lords; and after hearing counsel on each side at the bar of the House on one day and a long debate of the Lords on another, the case was referred to the committee for privileges; and the lords committees reported, that the petitioner was in the eye of the law son of the first earl, and that the House of Lords ought to advise the king to summon the petitioner. Journ. Dom. Proc. 6, June 1, 9, 10, 19, and 25 July, and 23 Nov. 1661.

"5. The House, instead of hearing the case on the report of the committee, adopted the violent measure of permitting a Bill, declaring the petitioner of 1661 illegitimate, to be read the first time: but the bill was not proceeded on with effect.

"6. In 1669, it appearing on a call of the House of Peers, that the earl of Banbury's name was omitted in the list, the house referred it to the committee of privileges to examine why his name was omitted, "he having formerly sat as a peer;" and this raises some suspicion, that there was at least for the time considerable dissatisfaction at the omission of him. Journ. Dom. Proc. 26 Oct. 1669.

"7. Under this encouragement the claimant's father as-son and heir of the first earl of Banbury appears to have petitioned the Lords for a Writ of Summons; and the House so far yielded, as to refer it to the committee of privileges. Journ. Dom. Proc. 23 Feb. 1669-70.

"8. Nicholas Knollis, who had thus once

sat as Earl of Banbury, dying, the claimant Charles his son and heir, upon coming of age and not being summoned, petitioned the Lords to represent his case to the king: and the House so far attended to the claim, as to refer it to the committee of privileges to report, and upon their report ordered a hearing of counsel for and against the claim. *Journ. Dom. Proc.* 10, and 23 June 1685.

" 9. In 1692, when the claimant Charles Knollis renewed his petition to the lords and counsel were heard for and against his claim, the House refused a motion to hear the opinion of the judges on the case; whence it should seem, as if there was an apprehension that if they were heard, their opinion would be for the claimant. *Journ. Dom. Proc.* 13 Dec. 1692, 9, 14, and 17 Jan. 1692-3.

" 10. The refusal to hear the judges on the case of the claimant Charles Knollis caused a protest of seventeen peers. *Journ. Dom. Proc.* 17 Jan. 1692-3.

" 11. The decision of the House against the same claimant on his last petition, was protested against by twenty peers. *Ibid.*

" Thus it appears, that the claim of Charles Knollis to the earldom of Banbury not only was founded upon the actual possession of his father, and when his father's legitimacy was questioned, was fortified by very striking evidence in favour of it; but at one time received the decision of a committee of the Lords in its favour. Thus too it appears, that though the claim was finally rejected, yet it was against the sense of a great number of peers, and upon a protestation by twenty of them, and under such circumstances, as go far toward inducing great probability, that had it not been refused to hear the judges, the claimant would have had the opinion both on the fact and the law of the case with him.

" From these views of the case, it seems, as if this claim of the earldom of Banbury

had been treated with peculiar rigor; and as if the claim had at last miscarried, because it was opposed by some violent prejudices, which were suffered so to operate as to prevent a cool and impartial consideration. The consequence of the rejection of the claim countenances this construction of the proceedings of the Lords: for it is remarkable, that from the rejection of the claim in 1692 to the present moment, there has been, not only an unmolested and uniform assumption of the earldom by the head of the family and of the viscounty by his eldest son for the time being, but so strong an impression in favour of the right, as to induce a general acceptance of them by the titles so assumed. As the prefacer understands, this sort of possession of the titles of earl and viscount has been even countenanced in some degree by the description of recent commissions from the crown. Nay, an idea even prevails, that if the head of the family for the time should be sued or prosecuted as a commoner, it would probably again cause a plea of misnomer and be followed with the same success, as so conspicuously attended the plea, when the replication of the order of the Lords rejecting the claim of peerage was adjudged against by the King's-bench a century ago.

" The prefacer has been unexpectedly carried into this long note by an impression of the hardship of the order rejecting the claim of the earldom of Banbury in 1692. If it should have the effect of promoting or assisting any revision of the case, the interruption, which it has caused in the close of the prefacer's narrative of judicature in parliament, will, so far as the prefacer is singly concerned, be compensated.—Concerning this case of the earldom of Banbury, see, besides the references already made, the Case printed for the claimant in 1685, and the new Case printed for him in 1697."

374. Proceedings in Parliament against Sir ADAM BLAIR,* and others, on an Impeachment of High Treason, for dispersing a seditious and treasonable Paper, printed and entitled, "A Declaration of King James the Second:" 1 & 2 WILLIAM & MARY, A. D. 1689—1690.

HOUSE OF COMMONS.

June 13, 1689.

THE House was informed that sir Adam Blair, captain Vaughan, captain Moyle, Dr. Elliott, Dr. Grey and several others, had dis-

persed a seditious and treasonable paper, printed, and entitled, "A Declaration of King James the Second."

Mr. Hampden. Before you read the Declaration, I would not have it pass for doctrine, that there is no treason but what is declared by

* I believe he was brother in law to lord Melfort. See Memoirs of captain Creighton, Nichols's edition of Swift's Works, vol. 14, p. 321.

" June 29, 1689. Their majesties Procla-

mation was published for apprehending sir Adam Blair and Dr. Grey for High Treason in dispersing king James's Declaration, promising the reward of 100*l.* for each of them to any one shall take them.

25 Edw. 3. If you take not that for granted, we shall never be safe, nor any government, if you cannot declare treason. There are other ways of destroying the government than by raising armies. But it would be strange if you should not call that treason which is tantamount to treason. Read the Declaration, but let not that pass for doctrine.

Col. *Birch*. I did expect this, and ten times more, when a Bill from the Lords lies by us about Treason. I desire one of those Declarations may be read, found upon the persons taken.

Sir *Robert Clayton*. I found my lord mayor at his house, examining those persons; and the people that took them took these declarations upon them.

The Declaration was then read, as follows :

‘ James R. Although the many calumnies and dismal stories, by which our enemies have endeavoured to render us and our government odious to the world, do now appear to have been advanced by them, not only without any ground, but against their own certain knowledge; as is evident by their not daring to attempt the proving these charges to the world, which we cannot but hope hath opened the eyes of our good subjects to see how they have been imposed upon by designing men; who, to promote their own ambitious ends, care not what slavery they reduce our kingdoms to: yet we cannot but rejoice that we have had an opportunity to demonstrate the falseness and malice of their pretences, since our arrival in this kingdom of Ireland, by making it our chief concern to satisfy the minds of our Protestant subjects, the defence of their religion, privileges and properties, is equally our care, with the recovery of our rights. To this end, we have preferred such of them, of whose loyalty and affection we are satisfied, to places both of the highest honour and trust about our person, as well as in our army. We have by granting our royal

“ July 7. Sir Adam Blair and Dr. Gray, who had made their escape, and were proscribed by proclamation, were taken in an open boat off of Dover making for Calais.

“ Feb. 11, 1690. Came up by Habeas Corpus Dr. Elliot, Capt. Vaughan, and Capt. Mold: and it appearing upon the return, they were committed for High Treason (in dispersing the late king James’s Declaration) and were thereof impeached by the House of Commons, they prayed to be bailed because of the dissolution of parliament they were impeached by, which had discharged the same; but the court thought the impeachment still continued, so they were denied to be bailed, and were remanded.” Narcissus Luttrell’s MS. Brief Historical Relation, &c.

In the same MS. it appears, that in July 1690, colonel Vaughan and captain Ryder were admitted to bail. See in this Volume the Proceedings against Crone.

‘ protection to such whose minds are shaken by the arts of our rebellious subjects, dispelled their apprehensions, and effectually secured them against the attempts of their private enemies. Our ear hath been always open to their just complaints; and so far hath our royal mercy been extended to those who were in arms against us, that we have actually pardoned several hundreds of them; and most notorious criminals are kept in an easy confinement, as they themselves acknowledge.

‘ We have taken care that our subjects of the Church of England be not disturbed in the exercise of their religion, the possession of their benefices and other properties; and all Protestant Dissenters enjoy the liberty of their consciences, without any molestation: and out of our royal care for the prosperity of our people, we have recommended to our parliament, as the first thing necessary to be dispatched, to settle such a security and liberty, both in spiritual and temporal matters, as may put an end to these divisions, which have been the source of all our miseries; being resolved, as much as in us lies, to entail liberty and happiness upon our people, so far as to put it out of the power of our successors to invade the one, or infringe the other. And this, we take God to witness, was always our design; of which we see our good subjects here are more and more convinced, by the great numbers of those who, having been seduced or frightened by the restless importunities of our enemies, are returned to their country and habitations, and who assure us daily, more would follow, if the ports were open: but the usurpers know too well the sincerity of our intentions, to permit a free passage of our said subjects, fearing nothing more than that their experience should deceive the rest, who are restrained more through ignorance than any ill intention; and therefore deny them that liberty which we afford to all, whose designs, we are satisfied tend not to the disturbance of the peace.

‘ By this our gracious and royal care of our Protestant subjects here (where the greatest part of our nation is Catholic) and have, as well as we received the highest provocation from their fellow-subjects of contrary persuasions; so that nothing but our own inclination to justice, and desire to see our people flourish, could move us to such a proceeding; we hope our subjects in England will make a judgment of what they expected from us: and we do hereby promise and declare, That nothing shall ever alter our resolutions, to pursue such and no other methods, as by our said subjects in parliament should be found proper for our common security, peace and happiness. And that none may be debarred of assisting us in recovering our rights, and redeeming our people from their present slavery, out of any apprehension from past miscarriages, we do hereby assure all our subjects, of what quality soever, let their

'crimes against us be never so great, that, if, in
'twenty days after our appearing in person in
'our kingdom of England, they return to their
'obedience, by deserting our enemies, and join-
'ing with us, we will grant them our full par-
'don, and all past miscarriages shall be forgot;
'so little do we delight in the blood or ruin of
'our people. But if after this our gracious
'condescension, they shall still continue to as-
'sist our enemies and rebels, we do, before
'God, charge all the blood which shall be af-
'terwards shed, upon them and their adherents.
'And, we doubt not, by the blessing of God
'upon our arms, to force the most obstinate to
'their duty; though, as we have made appear
'in reducing our rebellious subjects in this
'kingdom, we desire to use no other methods
'than lenity and mercy.

'Given at our Court in Dublin Castle, the
'18th of May, 1689, in the fifth year of our
'reign. God save the king.'

Mr. *Garroway*. You have now some names of persons taken with these Declarations; and when you charge any by Bill, you may add these; and I hope it will strike such a terror upon others, that you will have the effect.

Sir *Tho. Clarges*. You have but two Christian names. I am not of opinion to impeach men by other names than their Christian names; it may be reflection upon families of the same name, who are innocent. Order my Lord Mayor to send their Names and Examinations to-morrow.

Mr. *Hampden*. I think we are under some dispute, to vote before we know their Christian names. I would not have imputations upon persons of the same name. You may say, 'Dr. Grey to be impeached, who spread such a Declaration;' and then to-morrow, when you please, send up an Impeachment to the Lords; you may pass such a vote and describe them.

Sir *Wm. Williams*. A person that draws his sword against the king, by description of the person, is committed. It may fall out that you cannot know his name; therefore you may commit him by description.

Serjeant *Maynard*. I am against impeachment of these persons, that they may be punished. These Papers are high treason; an impeachment may walk long, before it comes to issue. Prosecute them by way of indictment, and then you may punish them severely and legally. Let the Judges lay it as a charge upon the Attorney and Solicitor General, that they effectually prosecute them at common-law.

Mr. *Garroway*. You see many people abroad in the nation, who refuse to own the government. We cannot give too much assistance to support it. I desire this prosecution may be by impeachment, and not by indictment, that the world may see you stand by your government.

Sir *Tho. Clarges*. I was of opinion, that impeachment was the best way for your jus-

tice. I am altered since, from what I have heard, viz. 'That you should bear your testi-
'mony of it.' If you send to the Lords, to order the Attorney General to prosecute, you may have speedy justice, the term now in being, three or four days in term time; indictments may be found by the grand jury, and you may have speedy trial, and speedy execution. I am afraid that these things have gone all over the nation, and I would have prosecution at the assizes all over the nation. Whereas the danger is great, so the resentments should be quick, and the like prosecution all England over.

Sir *Rob. Howard*. If any thing be done against the government, I would bring in the old manner of impeachments; nothing will settle your government better.

Sir *Henry Capel*. This is a point of safety, and that has led the House into this of impeachment. As for sending to the Lords, to order the Attorney General to prosecute these, have we not a king to command his officers and judges to try them? For many reasons offered, and many more that may be, I am for impeaching.

Sir *Wm. Williams*. If you proceed against him in the King's-bench, he cannot be tried till next term. If he be tried in London by a special Commission of Oyer and Terminer,—I like well trial in the King's-bench, solemn in the face of the kingdom; but if he be impeached in the name of all the Commons of England, it gives a dignity and honour to the king. If impeached by the Commons, it is not tied to this or that county; it is left indefinite and not confined to the formalities of other courts.

Sir *Tho. Littleton*. The greatest consideration of all with me is, Whether the House of Commons dare take notice of this? and men may take farther encouragement, and say, 'it seems the House of Commons dare not med-
'dle, but put it to the inferior courts;' therefore I am for impeachment.

Serj. *Maynard*. I have as much zeal for the punishment of these men as any man here, and am grieved at the slowness of proceedings; but when you may do it by law—This act was done in London, in a tavern in London—It may be, he cannot be tried in eight or ten days; but here is a clear offence: when you have brought it up to the Lords, the men are in their judgment, not yours. One man tried and condemned at common law, will work more upon the people than ten impeachments. If once you make that an example, not to try without the Lords, I do not know the consequence. I come here with grief of heart, to be here five months, and do nothing at all of this nature. Therefore I would not go before the Lords, when the law is clear, and may be tried by juries.

Mr. *Hawles*. The question is, Whether you will go by impeachment, or indictment? I am for impeachment. I do not think this to be a plain case of treason, by 25 Edw. 3. I do say, no court can judge this offence to be treason;

and that statute did plainly not bind the superior court of parliament, but the inferior only. Look but over the statute of 25 Edw. 3, and you will not find any words to reach this Declaration, &c. to be treason. The proper way is, to judge this high treason; and therefore I am for proceeding by impeachment.

Resolved, "That the persons who dispersed the Declaration, viz. Dr. Elliot, capt. Vaughan, sir Adam Blair, capt. Mole, Dr. Grey, &c. be impeached of High Treason."

June 24.

Mr. Attorney General* reported from the Committee, to whom it was referred to prepare Impeachments against sir Adam Blair, captain Vaughan, captain Mole, Dr. Elliot, and Dr. Grey, That they had prepared and agreed upon an Impeachment, accordingly: which he read in his place; as followeth:

ARTICLES OF IMPEACHMENT OF HIGH TREASON, and other High Crimes and Offences, against Sir ADAM BLAIR, Captain HENRY VAUGHAN, Captain FREDERICK MOLE, JOHN ELLIOT, Doctor in Physic, and ROBERT GREY, Doctor in Physic;

"Whereas king James 2, having abdicated the government; and their majesties king William and queen Mary having, on the 13th day of February, 1688, accepted the crown and royal dignity of this kingdom, according to the resolution and desire of the Lords spiritual and temporal, and Commons, now assembled in parliament: their said majesties did become, were, are, and of right ought to be, by the laws of this realm, our sovereign liege lord and lady, king and queen of England, and the dominions thereunto belonging, in and to whose princely persons the royal state, crown, and dignity of this realm, with all honours, styles, titles, regalities, prerogatives, powers, jurisdictions, and authorities, to the same belonging and appertaining, were and are most fully, rightfully and entirely, invested and incorporated, united and annexed; and their said majesties have been solemnly and publicly crowned, according to law, and the laudable custom of this realm: and whereas, in and upon their majesties preservation and government, the unity, peace, tranquillity and safety of this nation, doth, under God, consist and depend: nevertheless sir Adam Blair, captain Henry Vaughan, captain Frederick Mole, John Elliot, doctor in physic, and Robert Grey, doctor in physic, being subjects of their majesties, together with

divers others their complices and confederates, wholly withdrawing the faith, and due allegiance, which true and faithful subjects should, and of right ought to bear to their majesties, as false traitors to their majesties, and this realm, did, upon the 10th day of June, 1689, and at divers other times, most wickedly and traitorously design, contrive, agree, conspire, resolve, and, to the utmost of their power, endeavour to disturb and destroy the said peace and common tranquillity enjoyed within this realm; and to move, make, raise, and levy war, rebellion and insurrection, within the same; and to persuade, induce, and incite their majesties subjects to abett and assist them therein; and to deprive and depose their majesties of and from their royal state, title, crown and dignity; and to subvert the government of this kingdom, so happily preserved and settled by and under their majesties: and to that end they did traitorously assemble themselves, meet, and consult concerning the most proper means to be used, to execute and accomplish the aforesaid wicked and traitorous designs: and, in pursuance of the same, and for the purposes aforesaid, they did traitorously hold, maintain, set forth, declare, and publish, That their majesties were Usurpers; and that the said late king James the 2nd did continue lawful and rightful king of this realm; and did attribute to him the honours, styles, titles, regalities, prerogatives, powers, jurisdictions, and authorities, belonging and appertaining to the imperial crown of the same: and, to compass, fulfil, complete, and bring to effect, their said treason, and wicked purposes, they did traitorously, maliciously, and advisedly, contrive, make and procure, and cause to be made and procured, a certain detestable and traitorous Libel, purporting a Declaration of the said late king, by and under the name of king James 2; in which Libel it is contained, expressed, and declared, as followeth; viz. 'A Declaration of his most sacred majesty king James the 2nd, to all his loving subjects in the kingdom of England.'"—[Here follows the Declaration, see p. 1209.]

"And they did conceal the said Libel from their majesties, their magistrates, and ministers of justice; and the same did traitorously print, publish, and disperse, and did cause to be printed, published, and dispersed, to and amongst divers of their majesties subjects: and this was most maliciously contrived, prosecuted and done, whilst their majesties were engaged in a just and necessary war, for the defence of this kingdom against the French king, and in the suppressing a rebellion, procured, supported, and carried on, by the means and for the interest of the said French king, against their majesties, in their kingdom of Ireland. All which treasons, crimes, and offences above-mentioned, were contrived, committed, perpetrated, acted, and done, by the said sir Adam Blair, &c. and their complices, against our sovereign lord and lady the king and queen, their crown and dignity, and against the laws of this kingdom. Of

* Sir George Treby was at this time Attorney General, and sir John Sommers, Solicitor General; sir William Williams, Mr. Hawles, and sir Thomas Littleton were also of the Committee appointed to draw up these Articles, but it does not appear, that any of them doubted, "Whether the House of Commons were competent to impeach a commoner of high treason?" See 4 Hatsell, 240.

all which treasons, crimes, and offences, the knights, citizens, and burgesses, in parliament assembled, do, in the name of themselves, and of all the Commons of England, impeach the said sir Adam Blair, &c. and every of them.

"And the said Commons, by protestation, saving to themselves the liberty of exhibiting, at any time hereafter, any other Accusations or Impeachments against the said sir Adam Blair, &c. and also of replying to the Answers, which they, and every of them, shall make to the premises, or any of them, or to any other Accusation, or Impeachment which shall be by them exhibited (as the cause, according to course and proceedings of parliament, shall require); do pray, That the said sir Adam Blair, &c. be put to answer all and every the premises; and that such Proceedings, Examinations, Trials, and Judgments, may be, upon them, and every of them, had and used, as shall be agreeable to law and justice, and course of parliament."

Sir Tho. Clarges. This is a case of blood, and I hope, if I am tender you will excuse me. In 19 Ch. 2, there was a committee appointed to consider lord Clarendon's Impeachment. Nov. 6, the Articles were brought in. The course then was, that a day was set to consider, upon debate of the House, 'Whether the facts charged were, in the judgment of the House, treason.' Nov. 9, the consideration of the first Head of the fact of Treason took up from nine in the morning to five at night, 'Whether Treason should be assigned?' Then it was declared, 'That there should be no impeachment, but on the statute 25 Edw. 3.' Then lord Vaughan stood up, and would make good the 16th article; and said, 'I do accuse lord Clarendon of corresponding with the king's enemies.* I observe that in this parliament more attainders have been reversed than in any one parliament, and the reason is, the great oppression of Westminster-hall; and these are cautions for succeeding parliaments to be careful; and I move for a day to consider, whether this be Treason or no.

The Articles were then ordered to be engrossed.

June 26,

The Articles of Impeachment were read.

Sir Tho. Clarges. This Impeachment being matter of blood, I would have it debated, Whether the matter contained in it be Treason? In lord Clarendon's Case, it was said, there was never any precedent from Henry 4; nor by the words of the statute 25 Edw. 3, and I believe no precedent since that time. Fitzharris† was impeached, and that was for conspiring the death of the king. We are the grand inquest of England, and I hope I shall never be wanting in my duty. I would know, whether, if an indictment be brought to a

grand jury, the question ever was, 'Agree, agree,' [some calling out so] enquire whether the Indictment be according to law. I desire so much satisfaction as a jury would have. A consultation held, and no war levied, as in lord Russel's case, is no Treason. If the king's counsel will declare it to be Treason, I shall agree; if not, I doubt it.

Mr. Howe. Though we have no power to make treason, I hope we shall not have power to connive at it.

Sir Tho. Clarges. This is an extraordinary thing for a gentleman to say, 'that when a man speaks his mind here, he connives at treason.' Lord St. John, in his Argument* against lord Strafford, says, 'that judgment cannot be exercised but by Bill.'

Sir Tho. Lee. I confess, that I have not read that Argument this long time, therefore I will not controvert it, but I never heard that a parliament could not judge; but it is a power to be kept solely in parliament, lest it should be an example to Westminster hall; and therefore judged by Bill of Attainder. Before Edw. 3rd's time, Treason was dressed up as in the late Informations. If men act such things, it is destructive to the whole, and this was put into the statute of Edw. 3, by way of caution, like firing of a beacon. You send not up the Impeachment till the House dares venture their credit upon making it good, and the Commons ought to be satisfied that the evidence will hold out with the Lords as well as here; else the evidence should be punished. It is a mischievous practice, when the courts of justice have been exorbitant, and would be safe in so doing. This Declaration that sir Adam Blair has published, declares another king, and dethrones this. If this be a general opinion, I think we ought not to carry up this Impeachment, if it be a crime (which every body thinks) it ought to be carried up to the Lords, that it may be judged treason.

Sir Tho. Clarges. Lee was of opinion, in lord Clarendon's Impeachment, 'That there was no common law treason;' upon debate, that Impeachment was not carried up till it was clear, that the Article was treason. Before the statute 25 Edw. 3, Treason was so ubiquitous, that it was treason, to assert treason with the proviso relating to the judges in doubtful cases, &c. After that act, Treason was banded more than before. In R. 2nd's time, sir Thomas Hawksley was adjudged for making a motion in parliament, insomuch that Hen. 4 was petitioned by the Lords and Commons, 'That Treason might not be so hackneyed about;' and in queen Mary's time it was repealed. I dare put my credit upon it, there has been no Judgment of Treason from H. 3rd's time; and lord Coke is express, in his chapter of Treason, 'That the statute Edw. 3, was taken away by the statute of queen Mary.' Lord chief justice Vaughan used this argument, 'That there was no common law trea-

* See vol. 6, p. 342, of this Collection.

† See vol. 8, p. 237, of this Collection.

* See vol. 3, p. 1477, of this Collection.

son, no constructive treason.' Lord Vaughan, (now lord Carberry,) brought in an Article in Clarendon's Impeachment of his 'corresponding with the king's enemies, and betraying his secret counsels,' which was special matter; and then the Article was voted Treason.

Sir Tho. Lee. My friendship to lord Clarendon induced me no farther, than that I was against the Address for removal of him from the king; but I concurred with the House, and went through every vote to make impeachments easy here. At that time the king was angry with Clarendon, and took the seal from him, that he might go out of town into the country. The duke of York did support Clarendon, who at that time went to church, and was reputed a Protestant; at the same time, all the lawyers, raised by Clarendon, followed him, and a gentleman then said (Waller) 'Touch a lawyer, and all the lawyers will squeak.' Vaughan (who was quickly after made Chief Justice) argued as strongly against the Impeachment, as he had done before for it, but told you he had changed his opinion. There are two ways of delivering in an Impeachment; one at the Lords bar, another at a conference. The Impeachment of lord Mordaunt was delivered at a conference, by Mr. Seymour. I leave the House to consider, whether you will deliver this Impeachment at a conference.

Col. Birch. I have sat here long, and seen many things done. It is usual that the most able lawyers go up with an Impeachment to enforce it. I see in my eye a person of great worth, though aged (serjeant Maynard) I would have him go up with it.

Serjeant Maynard. Pray put not that upon me, who know nothing of the business. Pray let Birch go, who knows the whole business.

Col. Birch. I never refused the service of the House. The reason why I moved for serjeant Maynard was, because never any man did argue better in the Impeachment of lord Strafford. Clipping a shilling is treason, and is not subverting the government? I would have the person to carry it up, who is the fittest to carry it on.

The Impeachment was ordered to be carried up to the Lords by colonel Birch.

HOUSE OF LORDS.

June 26.

A Message was brought from the House of Commons, by colonel Birch and others: who brought up Articles of High Treason. Upon this, the House appointed the earl of Huntingdon, earl of Bridgewater, earl of Rochester, earl of Fauconberg, the lord Paget, lord Cornwallis, to meet this afternoon at five o'clock, and inspect the Journals, what hath been the Method and Proceedings upon Impeachments from the House of Commons; and make Report thereof to-morrow morning.

June 27.

The said Committee reported, "That they

VOL. XII.

have considered the Journals as far as the Impeachment of the first duke of Bucks in 1626; and did not examine further off, because they found the entries still shorter the further they went. Their lordships do not find, as far as they went, any particular account touching the method of receiving Impeachments. They find sometimes Impeachments have been delivered at conferences, and sometimes with and sometimes without Articles; but when they have been delivered at the bar of the House, it hath always been by way of message from the House of Commons: but it does not appear whether the Lords on the woolsack were sitting while the Articles were reading; nor doth it appear that any difference hath been made between the receiving a Message where an Impeachment hath been brought up, and any other Message."

The House agreed to this Report.

June 29.

This day being appointed to take into consideration the said Articles of Impeachment, the House ordered the Impeachment to be read: which was done. And, after debate, a committee was appointed to inspect the Journals of this House, as to Precedents of Impeachments, and the Grounds and Reasons of those Precedents; and to report to the House.

July 2.

REPORT OF PRECEDENTS OF IMPEACHMENTS, FROM THE JOURNALS AND RECORDS IN THE TOWER.*

The Earl of Rochester reported what Precedents the Committee have found in the

* The 16th chapter of lord Hale's Treatise on the Jurisdiction of the Lords House or Parliament relates to Parliamentary Impeachments as well of Commoners as Peers, and exhibits much curious learning respecting them. It is as follows:

"CONCERNING THE JURISDICTION OF THE LORDS HOUSE IN CRIMINAL CAUSES.

"Criminal causes are of two kinds. 1. Such as are capital, where the judgment is loss of life, as treason and felony.—2. Such as are less than capital, where judgment commonly is fine, imprisonment, and sometimes other corporal punishment, as the pillory, &c.

"As to the former of those, there were anciently in parliament these several ways of proceedings:

"1. By way of authoritative declaration of treason pursuant to the clause of 25 E. 3. touching treasons not therein specified. And this was and ought to be done by the king, lords, and commons by act of parliament [Nota, the case of the judgment of the earl of Salisbury, though dead 2 H. 4, n. 30, was upon a kind of conditional attainder by act of parliament 1 H. 4, n. if they should after take part with R. 2. 'Placita coronæ in parlamento 1 H. 4, n. 10.' upon

Journals relating to Impeachments and Records in the Tower :

Fitzharris.

" March 26, 1681, Edward Fitzharris was impeached of high treason ; but no Articles were brought up against him.

the petition of the commons.] And this equally concerns all persons whether peers or other. Such were the declarations of treasons touching John Imperial Rot. Parl. R. 2. the treason of [The case of sir John Mortimer in 2 H. 6. is probably meant. See Rot. Parl. v. 3, p. 202. Hargrave.] for breaking prison, Rot. Parl. H. 6. And therefore the declaration of the lords only acquitting the fact of the earl of Northumberland from treason. Rot. Parl. 5, H. 4. being only by the lords, was not such a declaration as was warranted by 25 E. 3. *de proditionibus*. But this concerns not the business in hand.

" 2. There was antiently a course, upon an accusation in the behalf of the king or by his command, to give judgment of death by the lords with the king's assent. And such was the proceeding Rot. Parl. 4 E. 3. against some peers, as Mortimer and Matravers, about the death of E. 2. at which time also the lord Thomas de Barclay, though he were unquestionably a peer of the realm, and was summoned to and sat in divers parliaments before and after, yet waived his trial by peers and pleaded not guilty to the accusation, 'et de bono et malo ponit se super patriam;' and a trial was thereupon had by twelve knights and esquires of the county of Gloucester 'in pleno parlamento' at the lords bar, and by them he was acquitted ; the only precedent that ever I saw of a trial of a peer by other than his peers, and that by a jury appearing at the lords bar in parliament.

" But besides these peers, that were tried upon an accusation of treason thus exhibited, there were some that were not peers had judgment of death given upon them, as Beresford Gurney and others for the same offence. But there is a solemn memorial entered upon the roll n. 6. 'ne trahatur in consequentiam,' viz.

'Est assentu et accorde per notre seigneur le roy et tous les seigneurs en plein parlement, que tout soit il que les dits peeres come judges de parlement empristrent en la presence notre seigneur le roy a faire et rendre les dits judgments per assent du roy sur aucunes de eux que ne fuerent pas leur peres, et ce par encheson de murder de seigneur lige et destruction de celui que fut cy pres de sanc royall et fitz du roi. Que pourtant, que les dits peres que ore sont, ou les peres que seront a temps a vener, ne soient nies tenus ne charges a rendre judgment sur autres que sur peres, ne a ce faire. Mes ayent les peres de la terre poer eins de ceo pur tous jours soient discharges et quietes. Et que les avant dits judgments ore rendus ne soient my trete en ensample ne'en consequence en temps en venir, par quoi les

" Mr. Attorney General acquainted the House of the Examinations taken against him; and that he had an order of the king's, dated the 9th of March instant, to prosecute him at law.

" Resolved, he shall be proceeded with at common law.

'dits peres puissent Dure charges desores d'adjudger autres que lur peres contre le ley de la terre, si autiel case aveigne, que Dieu defend.'

" Though this declaration is in part to own their power, and to disown any compulsion upon them to give judgment upon others than their peers ; yet the conclusion tells us, that such a judgment is against the law of the land. [Vid. Journ. Dom. Proc. 2 July 1689. Hargrave.] And it is observable, that though the case then in hand was a judgment of death, yet the tenor of the declaration is general.

" And yet the lords were not as good as their words; for in the case of Gomenies and Weston 1 R. 2. though they were no peers, judgment was given against them for treason ; and the like was done in Hall's case 1 H. 4.

" Yet it seems, even before the statute of 1 H. 4. hereafter mentioned touching appeals of treason and other misdemeanors, the party accused by such a private impeachment might decline the trial by the lords by examination of witnesses, and put himself upon a trial by the country.

" And thus Rot. Parl. 5 R. 2. n. 43. when Clivedon accused Cogan in the lords house in parliament for a treasonable offence, the party impeached, being only a commoner and no peer, pleaded not guilty to the impeachment, 'et de ceo il soy mette de bone et male sur le verdit de payis, et sur ce al fyne de ce parlement fuerent les partyes adjournes devant les justices a la commun ley de quont que appartient a ce ley.'

" And this is agreeable to Magna Charta, cap. 29. 'nec super eum ibimus nisi per legale judicium parium suorum.' And this being duly considered, may perchance go far in impeachments of commoners, especially by private impeachments, and possibly by others, as to the point of trial by examination of witnesses before the lords in criminal causes.

" Some indeed have thought this declaration of 4 E. 3. being done thus solemnly 'in pleno parlamento' was a statute [The judges in 1689 inclined to this opinion. See Journ. Dom. Proc. 2 July 1689.—Hargrave.] or act of parliament. But that seems not so clear. But it was certainly as solemn a declaration by the lords as could be made less than an act of parliament, and is as high an evidence against the jurisdiction of the lords to try or judge a commoner in a criminal cause as can possibly be thought of: 1. Because done by way of declaration to be against law: 2. Because it is a declaration by the lords in disaffirmance of their own jurisdiction, which commonly judges chuse rather to amplify, if it may be, than to abridge.

" 3. The third method of proceeding in capi-

Earl of Tyrone.

" January 7, 1680. The earl of Tyrone impeached of high treason. No Articles brought up. The parliament prorogued two days after ; so no further proceedings.

tal cases, as also sometimes in causes merely criminal, was by a kind of parliamentary appeal by certain lords appellants. Thus it was done in the great process in parliament 11 R. 2. by the lords appellants, and afterwards in 21 R. 2. by lords appellants of the contrary faction. And this not only, where peers were appealed, but where commoners were also appealed, who had in those cases judgment of death.

" 4. The fourth course of proceeding even in capital causes was by articles of impeachment by the House of Commons. And this was commonly used, not only before the statute of 1 H. 4. 'de quo infra,' but after, as in the impeachments of Gomenies and Weston and the bishop of Norwich 1 & 7 R. 2. Lyons and Alice Peres 50 E. 3. the duke of Suffolk in 28 H. 6. the duke of Buckingham 3 Cha. the earl of Strafford in 16 Cha. and divers others : and that not only in cases capital, but such as were only misdemeanors.

" Now to give an account how the law hath been taken touching these kinds of proceedings, and what hath intervened touching them.

" 1. For the first of these there is no question ; for such declarations by the king and both Houses in pursuance of the statute of 25 E. 3. are of the strength of acts of parliament.

" 2. For the second of these, viz. impeachments of treason by the king's ministers, as his attorney generals, this hath been held against law, and particularly against the statute of 25 E. 3. st. 5. cap. 4. before recited. And though it were a turbulent time, yet it was so granted by the lords themselves in the impeachment presented by Mr. Attorney Herbert against lord Kimbolton and the five members of the House of Commons, and the prosecution thereby desisted from, and the accusation withdrawn. And indeed the statute of 1 H. 4. seems to include this case.

" 3. As to appeals of treason and misdemeanors, though they were in use at the common law, as appears by Britton cap. , and much used in parliament, especially in the time of R. 2, yet by the statute of 1 H. 4, cap. 14, all appeals of treason and also of misdemeanors in parliament at the prosecution of any private person are wholly taken away. For the words are general, that no appeals be from henceforth made or in anywise pursued in parliament in time to come. Vid. Rot. Parl. 3 H. 6, n. 38.

" And therefore in this parliament now continuing by prorogation, where the earl of Bristol delivered in articles intitled of high treason and other misdemeanors against the earl of Clarendon, upon a solemn reference by the House of Lords to all the judges, it was unanimously resolved and so reported, that both as

Scroggs.

" January 7, 1680. Sir William Scroggs impeached of treason and misdemeanors, and Articles brought up ; one whereof was a general article of treason, for endeavouring to

to the matters of misdemeanors as well as those of high treason this impeachment was against law and against the statute of 1 H. 4, c. 14.

" It is true, that Rot. Parl. 15 E. 3, n. 41, there was a judicature set up by act of parliament in the Lords House for miscarriage of public ministers, viz. 'que soient oustes et punies par le jugement des peres et autres covenables y mises : et sur ce le roy ferra prononcier et faire execution sans delay selonc le jugement des peres en parlement.' But this jurisdiction lasted not long ; for by the parliament of 17 E. 3, n. 23, that whole parliament is at once repealed, 'et perdu le nosme de statut come cel qu'est prejudicial et contraire as leyes et usages de realme et as droits et prerogatives de nostre seigneur le roy,' and was never enacted again.

" 4. But as to a criminal proceeding upon an impeachment sent up to the Lords by the House of Commons, that was never esteemed within the prohibition of the statute of 1 H. 4, and accordingly it was declared by the judges in that resolution above mentioned in the case between the earls of Bristol and Clarendon. And the reason is ; because the accusation or impeachment of the House of Commons is in nature of the highest presentment or indictment by the grand inquest of the whole kingdom.

" In Rot. Parl. 2 H. 4, n. 30, after the making of the statute of 1 H. 4, there was a strange judgment of treason given against the earl of Salisbury after his death by the House of Lords. [But nota, this judgment against the earl of Salisbury after his death was in pursuance of a kind of conditional attainder, if ever he took part with R. 2. Vid. Rot. Parl. 1 H. 4.] Rot. Parl. 2 H. 5, p. 1, n. 12, a petition of error by his heir was preferred and received by the Lords ; and among other apparent errors, which are entered Rot. Parl. 2 H. 5, p. 2, n. 13, he assigns this for error, that the judgment was given 'sans petition ou assent de communes en le dit parlement, queux de droit serront petitioners ou assentours de ceo que serra ordeine pur ley en parlement.' The lords nevertheless affirmed their judgment ; and in 9 H. 5, the earl obtained an act of restitution. I only mention it to this purpose, that notwithstanding the statute of 1 H. 4, an impeachment by the commons was always allowed ; and accordingly it hath been practised in all succeeding ages since.

" The causes before mentioned are indeed principally capital causes, as treason and felony. But withal the resolutions in the case of the earls of Bristol and Clarendon extend the statute of 1 H. 4, to criminal causes that are not capital : and the plain words of the statutes of 25, 28, and 42 E. 3, against putting men to

subvert the fundamental laws of the kingdom, without specifying any particular fact. He gives 10,000*l.* bail for his appearance, and two sureties, with 5,000*l.* apiece. No further proceedings.*

answer upon suggestion without presentment extend equally to all criminal causes as well as capital.

"And yet I must grant, that even in criminals the House of Lords did exercise a jurisdiction as well after those statutes as before.

"1. In all cases, where by special acts of parliament the king's council had jurisdiction, which are remembered *supra*, chap. 4, there the 'magnum consilium' or the Lords House had a jurisdiction. And although it seems, that at first or in the more antient times the lords and 'consilium regis' made as it were but one 'magnum consilium' in parliament; yet when in process of time the whole power was assumed by the Lords House, so that they became the court, and the judges and others of the 'consilium ordinarium' became but assistants, the lords in parliament carried with them the authoritative jurisdiction in these cases.

"2. Whereas by the tacit concession of the Commons petition in parliament Rot. Parl. 1 R. 2, n. 87. [Vid. Rot. 1 H. 4. n. 162, confirming the statute 1 R. 2,] and the fuller enforcement thereof Rot. Parl. 2 R. 2, p. 2, n. 4, both mentioned at large *supra*, chap. 4, there was a loose left for some jurisdiction in the council, where the offenders seemed too great for an ordinary prosecution, or the nature of the offence carried on by oppression with a high hand; the House of Lords after the abovementioned statutes did many times interpose with their power, and called the offenders before them upon complaint of private persons. But it rarely ended in any judicial punishment, unless the parties submitted thereunto; but only a due provision to amend the inconvenience.

"Such were these that follow.

"Rot. Parl. 4 R. 2, n. 17, touching some dangerous letters supposed to be written by Ralph Ferrers found to be forged, and thereupon Rot. Parl. 5 R. 2, n. 42, discharged.

"Rot. Parl. 5 R. 2, n. 45, a great riot by the town of Cambridge upon the scholars. They submit themselves 'de alto et basso' to the king's determination; 'par vertu de quel sub- mission le roy, par advice de prelates et seigneurs en ce parlement' seizes their franchise, and gives part to the university, and restores the rest to the town.

"Rot. Parl. 8 R. 2, n. 12. [There is an error in this reference; n. 12, of 8 R. 2, being the case of Walter Sibill, who was fined and imprisoned for defaming Robert de Vere, earl of Oxford. Hargrave.] Candish upon the complaint of the chancellor for a scandalous defamation by a petition. He Candish is fined

* This is a great mistake, see vol. 8, p. 212, of this Collection.

Seymour.

"December 21, 1680. Edward Seymour, esq. impeached of high crimes and misdemeanors, and the Articles brought up against

and imprisoned. But this is but pursuant to the act of parliament against those, that fail in proof of their petitions.

"Ibidem n. 19, the townsmen of Bury adjudged by the lords to be bound to the abbot in bonds with certain conditions, 'nient obstant le commune ley de terre est encounter cest graunt et ordonnance;' for it was a capitulation by the townsmen by consent to gain a pardon.

"Rot. Parl. 15 R. 2, n. 16, upon the petition of the prior of Holland touching a riot and forcible entry, a commission issued to a serjeant at arms to take and bring in the rioters. They came and confessed the riot, and were committed to the Tower till they made fine to the king, which they did. This is the only case of latter times, wherein offenders of this kind were fined; but yet it was agreeable to law; for they had by the act of [The original has a blank here. Hargrave.] cognizance of such cases.

"Ibidem n. 17, the abbot of St. Osyth complained of oppression and maintenance by John Rokell. He was committed; and after the difference ended by the award of the duke of Guyen.

"Ibidem n. 19, Brian committed for putting a papal bull in execution. This was within the cognizance of the lords of the statute of provisors, which refers it to the 'consilium regis.'

"Ibidem n. 20, 21. Hardinge committed to the Tower for a false accusation against the archbishop of Canterbury. This was but incident to their jurisdiction.

"Rot. Parl. 16 R. 2, n. 19. Richard Gomeser complaining of the power and oppression of his adversary referred to an award; and if not ended that a good jury be returned in the suit in the court below.

"Rot. Parl. 17 R. 2, n. , between Windsor and Scrope touching champerty. The defendant acquitted by the judgment of the Lords spiritual and temporal.

"Rot. Parl. 4 H. 4, n. 19, between Pomeroy and Courtney touching a riot, forcible entry, maintenance, and oppression in a suit at law. Direction given only that a good jury be returned.

"Ibidem n. 20, between the abbot of Newnham and Courtney for a forcible entry and other outrages. Courtney committed and ordered to keep the peace.

"Ibidem n. 21. Portington against the same Courtney for oppressions and undue obtaining of release. The release, by consent of Courtney and judgment of the lords and king, thereupon vacated, and a special assise directed.

"Rot. Parl. 13 H. 4, n. 12, between the lord Ross and Tirwhitt for riots. Referred to the archbishop's award, and by him ended.

him. He is called in, hears the Articles read, and is ordered to put in an Answer.

"December 23. He delivered in his Answer, which was read. No further proceedings.

Penn.

"April 24, 1668. Sir William Penn impeached of several high crimes and misdemeanors. The articles delivered at a confer-

"After the time of H. 4, I find very little footsteps of proceeding in the lords house in cases criminal: but people took their ordinary course at law; or if they resorted to parliament, they began in the house of commons, and then it was transmitted by them to the lords, and it ended in a bill or act of parliament.

"And those cases above mentioned are the most that I find after 25 E. 3, which nevertheless appear for the most part to be, either in such cases where the house of lords as the 'magnum consilium regis' had jurisdiction by acts of parliament, as in great riots, false accusations before themselves; or where by the power and outrageous oppression and violence of men of power the proceeding of the common law was obstructed: and by the power of the lords house and their interposition that obstruction removed, and suits remitted to their ordinary regular course in the ordinary courts of justice.

"And indeed in those turbulent times there was great necessity and use of such interposition of the lords house to preserve the peace, and to afford the law its due course and current; and therefore in those acts of 1 R. 2, and 2 R. 2, above mentioned tacitly allowed even to the 'consilium ordinarium.'

"And hence it was, that when rot. parl. 2 H. 6, n. 16, the private council of that young prince was established, and their power declared by act of parliament, it is specially provided, that all bills before them, that contain matters terminable at common law, be remitted there to be determined; but if so be the discretion of the council feel too great might on the one side and unmight on the other, there they might discreetly interpose, that suits be fairly carried.

"And though possibly as well the lords house, as the king's council, by occasion of these admissions and exceptions, might in some cases exceed; yet neither the one nor the other took upon them an universal or common jurisdiction in criminal cases, but left them ordinarily to the ordinary courts of justice.

"But in all cases, where the evidence of the fact was not clear by the confession of the parties or great notoriety of the fact, the party complained of might plead the general issue, and put himself upon the country. And then the complaint was either sent into the king's bench to be tried, which was the usual course; or special commissions of enquiry issued to try it by inquest; or (which was very rare) it

ence, and sir Wm. Penn required to appear at the bar.

Drake.

"December 6, 1660. William Drake impeached, for writing a scandalous, seditious, and wicked Pamphlet.

"December 11. Ordered to be brought to the bar.

"December 19. The Lords declare, That

was tried by a jury returned 'coram rege et consilio,' as was done in the case between Bartholomew Badlesmer constable of the castle of Bristol and the mayor and commonalty of Bristol; where the jury was returned 'coram consilio,' and found the defendants guilty, for which they made fine of two hundred marks, rot. parl. 9 E. 2, n. 7, which though it were a process 'coram consilio,' yet it seems to be in the lords house in parliament, because entered there of record; the only example of such a trial in parliament, except that of 4 E. 3, of the lord Barclay abovementioned, and that of Alice Peres, rot. parl. 1 R. 2, who pleaded not guilty, and was tried by a kind of jury.

"And thus much of criminal proceedings in the lords house. Wherein I meddle not with proceedings in cases of breach of privilege, because of another nature. Nor have I mentioned many cases before 25 E. 3, in the times of E. 1, and some in the beginning of E. 3, because before the statutes of 5, 25, & 42 Ed. 3, which were made against proceedings without due presentment. Nor have I mentioned the proceeding against Lee Rot. Parl. 42 E. 3, n. 21, 22, &c. that against Lyons the lord Latimer and others Rot. Parl. 50 E. 3, n. 17. 20, against Gomines and Weston Rot. Parl. 1 R. 2, n. 38, that against the bishop of Norwich, [Rot. Parl. 7 R. 2, n. 15. Hargrave.] R. 2; that against the dukes of Surrey and Aumerle, marquis of Dorset, earl of Gloucester and John Hall touching the murder of the duke of Gloucester: [Rot. Parl. 1 Hen. 4. Hargrave]: for he, that carefully looks into all parts of the records of these proceedings, will find them, either by the promotion or petition of the House of Commons, or in pursuance of acts of parliament directing; and therefore I do not mention them.

"And the like method of impeachments of the House of Commons delivered into the Lords House, against as well commoners as peers, hath been frequently used in latter times. Whereupon the Lords took the defence or answer of the persons impeached; received proofs; and upon a private debate among themselves first had, agreed touching the censure whether guilty or not guilty; and if guilty, then proceeded to the particulars of their censure, and oftentimes acquainted the king with their sentence. And when the Lords were agreed of their judgment, they sent to the House of Commons to acquaint them they were ready for judgment. Whereupon the House of Commons came up to the Lords

if this parliament be dissolved before that they shall have time to give judgment against the said Drake, that then the king's Attorney do proceed against him.

"The Lords, apprehending they may not have time before their dissolution to proceed in judicature against him, ordered, That Mr. Attorney do, in his majesty's name, proceed against him in the King's-bench.

Radcliffe.

"December 29, 1640. Sir George Radcliffe impeached of treason; but no articles brought up.

"December 31. Articles were delivered against him, at a conference; one whereof was, That he had traitorously conspired and confederated with the earl of Strafford, to subvert the fundamental laws and government of the realms of England and Ireland, and to introduce an arbitrary and tyrannical government, against laws; and hath been a counselor, actor, and abettor, in that wicked and traitorous design of bringing the Irish army into England, to compel the subjects of this kingdom to submit thereunto. He was brought to the bar, and, at his request, had counsel allowed him.

Justice Berkley.

"February 12, 1640. Sir Robert Berkley was impeached by the Commons of treason. No articles then brought up. He was committed to the chief sheriff of London.

House with their Speaker, and demanded judgment against the persons impeached; and the Lords being in their robes, the chancellor or other speaker of the Lords House read and pronounced the judgment of the Lords. This was the method used in the parliament 1620, in 18 Jam. against the lord chancellor Verulam, 20 Martii 1620. 3 Maii 1621. 4 Maii 1621, against sir Thomas Michel; 4 Maii 1621, against Yelverton; 15 Maii 1621, against Flood, who was first censured by the House of Commons, (whereof the Lords complained as an intrusion upon their judicature) and then after a conference between both Houses censured by the Lords, 5 Maii 1621; 25 Maii 1621. The like method of proceeding in all points in the parliament 21 Jam. as against the lord treasurer, viz. the earl of Middlesex, as appears by the Journal book of that parliament."

See, also, 2 Inst. 50. Pryn's Plea for the Lords, 324. Seld. Judic. in Parl. 3, as cited by Mr. Hargrave in his preface and chap. 17, of lord Hale's Treatise; in different passages of which, the unusual warmth of expression can scarcely fail to excite some reflections on the lively indignation entertained by this most profound and exact lawyer, most upright and constitutional magistrate, most sober and contemplative philosopher against judicial usurpation.

"July 6, 1641. A charge was delivered at a conference, against him; but not entered in the Journal.

"October 26, 1641. He gives in his answer, petitions for counsel, and a warrant for witnesses; and that he may have liberty, with a keeper, to go to Serjeant's-inn, to peruse his papers there.

"April 29, 1643. A message from the Commons, That whereas the Commons have brought up impeachments against divers of the judges, some of high treason, and some for high crimes and misdemeanors; the Commons desire to have a speedy day appointed, wherein they may come and demand judgment against the said judges, for the judgment touching ship-money only.

"Ordered, That Mr. Justice Berkley shall be tried for the matters of ship-money only.

O'Neale.

"December 18, 1641. Daniel O'Neale, accused of high treason by the Commons. No articles brought up. He was committed to the Gatehouse.

"January 26, 1641. He is removed from the Gatehouse to the Tower.

Archbishop of Canterbury.

"December 18, 1640. William Laud, archbishop of Canterbury, impeached by the Commons of high treason. No articles then brought up. He is committed to the black rod, till he hath cleared himself of this accusation.

Mompesson.

"March 3, 1620. A message from the Commons, concerning sir Giles Mompesson's being fled; whereupon a proclamation was issued for the apprehending him. No articles were brought up against him.

"Rot. Parl. 4 Edw. 3. (N^o. 2.) Several judgments for high treason were given against several commoners by the Lords.

Rot. Parl. 4 Edw. 3. (N^o. 2.)

Judicium Simonis de Beresford.

"Item, in mesme le Parlement, si chargea n're Seign. le Roi les ditz Countes, Barouns, et Peres, a doner droit et loial juggement, come affiert, a Simon de Beresford, Chivaler, q' estoit eidant et conseillant au dit Roger de Mortimer en totes les Tresons, Felonies, et Malveistes, pur lesqueles le avandit Roger issint fust agarde et ajuge a la Mort, come conue [Origin. come.] Chose et notoire est as ditz Peres a ce q' le Roi entent; lesqueux Countes, Barons, et Peres revyndrent devant n're Seign. le Roi en mesme le parlement, et disoient touz come d'une Voice, q' l'avant-dit Simon ne feust pas lour Pere, par qoi eux ne furent pas tenuz a jugger luy come Pere de la Terre: Mes pur ce q' notoire Chose est, et conue a touz, q' l'avantdit Simon estoit aidant et conseillant au dit Roger en totes les Tresons, Felonies, et Malveistes susditz, lesqueles Choses sont en

Purpris de Roial Poer, Murdre de Seign Lige, et Destruction de Sank Real, et q'il estoit auxint coupable d'autres div'ses Felonies et Robberies, et principall Meyntenour de Robbeours et Felouns, si agarderent et ajuggerent [les ditz] Countes, Barouns, et Peres, come Jugges du Parlement, par Assent du Roy en mesme le Parlement, q' le dit Simon, come Treitre et Enemy du Roy et du Roialme, feust treyne et pendu: Et sur ce estoit command a Mareschal a faire l' Execuc'on du dit Juggement; laquele Execution fust fait et persourny le Lundy prochein apres la Feste de Saint Thomas L'apostle.

Judicium Joh'is Mautravers. 3.

"Tres touz les Peres, Countes, et Barouns, assemblez a ceste Parlement a Westm. si on examine estraitement, et sur ce sont assentuz et acordez, q' Johan Mautravers si est cupable de la Mort Esmon Counte de Kent, le Uncle n're Seign. le Roi q'ore est, come celui q' principalement, traierusement, et fausement, la Mort le dit Counte compassa, issint q' la ou le dit Johan savoit la Mort le Roi Edward; ne pur quant le dit Johan, par enginouse Manere et par ses fausses et mauveise Sotinetes, fist le dit Counte entendre la Vie le Roi, lequel faus Compasement fust Cause de la Mort le dit Counte, de tut le mal q' s'ensuit: Par quoi les susditz Peres de la Terre et Juges du Parlement, ajuggent et agardent q' le dit Johan soit treyne, pendu, et decolle, come Treiture, queu Part q'il soit trove: Et prient les Peres susditz a n're Seign. le Roi, q'il voille commander q' Briefs soient faitz, de faire publier et crier par tut le Roialme, q' qi purra prendre le dit John vif, et le mesne au Roi, il auera M. Marcs; et si par cas ne purra estre pris vif, q' qi porte sa Test, il auera d. l. du Doun le Roi.

Judicium Bogonis de Bayons et Joh'is Deveroil.

"Estre ce, au tiel Juggement est acorde, q' soit fait de Boeges de Bayons et Johan Deveroil, par la cause susdite; et qe qi purra prendre le dit Boeges vif, et mesne au Roi, auera C. ou q' porte la Teste, il auera Cent Marcz; et q' qi purra prendre le dit Johan vif, et mesne au Roi, auera C. Marcz, et qi q' port la Teste, auera xl. l. du Doun le Roi.

Judicium Thome de Gourney et Will'i de Ocle.

"Item, a tieu juggement est assentuz et accorde de Thomas de Gourney et William de Ocle, pur la Mort le Roi Edward Pier n're Seign. le Roi q'ore est q' fausement et traierusement lui murdrerunt; et q' qi puisse prendre le dit Thomas vif, auera C. et q' qi porte la Teste, C. Marcz; estre ce q' qi puisse prendre le dit William vif, auera C. Marcz; et qi q' porte la Teste, si par cas ne puisse estre pris vif, il auera xl. l. du Doun le Roi."

Rot. Parl. 4 Edw. 3. (N°. 6.)

Concordia ne trahatur in Consequentiam.

"Et est assentu et accorde, par n're Seign. le Roi et touz les Grantz en pleyen Parlement,

q' tut soil il les ditz Peres) come Juges du Parlement, empristrent en la Presence n're Seign. le Roi, a faire et a rendre les ditz Juggementz par Assent du Roi sur aucuns de ceux q' n'estoient pas lur Peres, et ce par encheson de Murdre de Seign. Lige et Destruction de celui q' fu si pres de Sank Roial et Fitz du Roi: Q' par tant les ditz Peres q'ore sont, ou les Peres q' serront en temps avenir, ne soient mes tenuz ne chargez a rendre Jugement sur autres q' sur lour Peres, ne a ce faire; mes eient les Peres de la Terre poer eins de ce pour touz Jours soient dischargez et quietz; et q' les avanditz Jugementz ore renduz ne soient tret en Ensample n'en Consequence en Temps avenir, par qoi sez ditz Peres pussent estre chargez desore a jugger autres q' lur Peres contre la Lei de la Terre; si autiel Cas aveigne, q' Dieu defend."

After the reading the copy of the abovesaid Record, which was affirmed by one of the peers to be authentic, he having examined it with the Roll; and debate thereupon;

This question was asked the Judges, "Whether the said Record is a statute?"

The Judges answer, "As it appears to them by the aforesaid copy, they believe it is a statute; but, if they saw the Roll itself, they could be more positive therein."

And after further debate, this question was proposed to be asked the Judges:

"Whether the Lords, by this statute, be barred from trying a commoner upon an impeachment of the House of Commons?"

Then this previous question was put, "Whether that question shall be put to the Judges?"

It was resolved in the negative.

And, after further debate, this question was put, "Whether this House will proceed upon the Impeachment brought from the House of Commons against sir Adam Blaire, captain Henry Vaughan, captain Frederick Mole, John Elliot, doctor in physic, and Robert Grey, doctor in physic?" It was resolved in the affirmative.

Ordered, That the keeper of Newgate be, and is hereby required, to bring in safe custody to the bar of this House, the bodies of the said sir Adam Blair, captain Henry Vaughan, captain Frederick Mole, John Elliot, doctor in physic, and Robert Grey, doctor in physic, or such of them as are in his custody, on Thursday next, at ten o'clock in the forenoon, to hear the said Articles read.

July 4.

This day being appointed for the persons impeached by the House of Commons of high treason, and other high crimes and offences, to be brought to the bar, to have their charge of impeachment read unto them: who being come, they were sent for in.

The keeper of Newgate brought to the bar, captain Henry Vaughan, captain Frederick Mole, and John Elliot doctor of physic, these only being in his custody; who kneeled at the bar.

And the marquis of Halifax lord privy seal, Speaker *pro tempore*, told them, 'That they stood impeached by the House of Commons, in the name of all the Commons of England, of high treason and other high crimes and offences; and that the articles of impeachment should be read unto them; and bid them stand up.'

Then the clerk read the said Articles of Impeachment. Which being ended, the Speaker asked captain Henry Vaughan, 'what he had to say for himself?' He desired, 'That he might have a copy of the Articles of Impeachment, and time to answer, and counsel allowed him, and his wife and friends to come to him.'

Then captain Frederick Mole was asked by the Speaker, 'What he had to say for himself?' He said, 'He was a stranger to the laws of this country; desired the same as captain Vaughan did.'

Then John Elliott, doctor in physic, was asked by the Speaker, 'What he had to say for himself?' He desired the same as captain Vaughan had done. Then they withdrew.

The House taking their desires into consideration; Then they were called in again, and kneeled at the bar until they were bid stand up. And the Speaker said, 'That the lords had considered of their desires; and had ordered that they should have a copy of their charge, of Articles of Impeachment, and counsel allowed them, such as they should name (then captain Henry Vaughan did name those in the following order,) and their friends allowed to come to them; and that they stood committed to the prison of Newgate by order of this House.' Then they withdrew.

Ordered, That the said captain Henry Vaughan, captain Frederick Mole, and John Elliott doctor in physic, shall stand committed to the prison of Newgate, there to be kept in safe custody, in order to their trials.

July 22.

This day being appointed for sir Adam Blair and doctor Gray to put in their Answers to the Impeachment of the House of Commons against them; they were brought to the bar, and kneeled until they were bid to stand up.

They delivered in their several Answers, which were read, as follow:

"The humble ANSWER of Sir ADAM BLAIR, now Prisoner in the Gate-House, to the Articles of Impeachment of High Treason, and other high Crimes and Offences, exhibited to the Lords Spiritual and Temporal in Parliament assembled against the said Sir Adam Blair and others therein named, whereof he stands impeached, by the Knights, Citizens, and Burgesses in Parliament assembled, in the name of themselves and the Commons of England.

"The said sir Adam Blair, in the first place, protesting his innocency of and from all the treasons, and crimes, and offences whatsoever,

in the said articles contained, and no way acknowledging, granting, or admitting, all or any the clauses, articles, or matters in the said articles of impeachment contained or specified (so far as the same any way concerns him) to be true, as in and by the said articles of impeachment is supposed; and humbly craving, that all benefit and advantage may be saved to him, of excepting to the generality, uncertainty, and deficiency of the said charge; as likewise the benefit of having and relying upon your lordships great judgment, whether the crimes and offences so imposed upon him by the said impeachment, do, by the certain known laws of this realm, (so renowned for right and justice) amount to the high crime of treason:

"Which being prayed; and, as he hopeth, being granted; for answer thereunto he saith, that he is not nor ever was guilty of the treasons, crimes, and offences, or any or either of them, of which he stands charged by the said impeachment; and, for trial thereof, putteth himself upon, and humbly submitteth to, the judgment of your lordships; whose justice he doth and always shall rely upon, and therein acquiesce.

AD. BLAIR."

"The humble ANSWER of ROBERT GRAY, doctor in physic, now prisoner in the Gate House, in the Articles of Impeachment of High Treason, and other high Crimes and Offences, exhibited to the Lords Spiritual and Temporal in Parliament assembled, against the said Robert Gray and others therein named, whereof he stands impeached, by the Knights, Citizens, and Burgesses in Parliament assembled, in the name of themselves and the Commons of England.

"The said Robert Gray, in the first place, protesting his innocency of and from all the treasons and other crimes and offences whatsoever in the said articles contained, and no way acknowledging, granting, or admitting, all or any the clauses, articles, or matters in the said articles of impeachment contained or specified (so far as the same any way concerns him) to be true, as in and by the same articles of impeachment is supposed; and humbly craving that all benefit and advantage may be saved to him, of excepting to the generality, uncertainty, and deficiency of the said charge; as likewise the benefit of having and relying upon your lordships great judgment, whether the crimes and offences so imposed upon him by the said impeachment do by the certain known laws of this realm (so renowned for right and justice) amount to the high crime of treason:

"Which being prayed; and, as he hopeth, being granted; for answer thereunto he saith, that he is not, nor ever was, guilty of the treasons, crimes, and offences, or of any or either of them, of which he stands charged by the said impeachment; and, for his trial thereof, putteth himself upon, and humbly submitteth

to, the judgment of your lordships, whose justice he doth and always shall rely upon, and therein acquiesce. ROBERT GRAY."

Ordered, that the copies of the said Answers be communicated to the Commons.

It does not appear that the Commons made any replication to these answers.

March 31, 1690.

Upon reading the Petition of sir Adam Blair prisoner in the Gate House; praying, he may be at liberty, giving sufficient bail to attend this House:

It is ordered, That the consideration of the said petition be, and is hereby, referred to the Lords committees for privileges.

April 5.

The question being put, "Whether sir Adam Blair shall be admitted to bail?" It was resolved in the affirmative.

Ordered, That on Wednesday next, this House will take into consideration, "Whether Impeachments continue from Parliament to Parliament?"

Ordered, That the keeper of the Gate House at Westminster, do bring to the bar of this House, sir Adam Blair, now in his custody, on Monday next, in order to his being bailed; and that the said sir Adam Blair do bring with him two sureties, each to be bound in 2,500*l.* and he in 5,000*l.* for his appearing before this House at all times when he shall be so ordered.

April 7.

Sir Adam Blair was bailed, and the condition of the recognizance is, That if the said sir Adam Blair shall appear before this House at all times when he shall be so ordered, then this recognizance to be void and of none effect; or else to stand in full force and virtue.

On the 8th and 9th of April similar recognizances were taken from the other persons impeached.

In the next session of parliament, on the 2d and 5th of December, 1690, sir Adam Blair and the others, were upon their petition discharged from their bail.

375. Proceedings in Parliament against JAMES Earl of SALISBURY, and HENRY Earl of PETERBOROUGH, on an Impeachment of High Treason, "For departing from their Allegiance, and "being reconciled to the Church of Rome:"* 1 & 2 WILLIAM & MARY, A. D. 1689—1690.

HOUSE OF COMMONS.

October 26, 1689.

RESOLVED, That an Impeachment of high-treason be sent to the Lords against the earls of Salisbury and Peterborough for departing from their Allegiance, and being reconciled to the Church of Rome. And that Mr. Foley do impeach the said earls at the bar of the House of Lords, in the name of the House of Commons, and of all the Commons of England.

HOUSE OF LORDS.

October 26, 1689.

A Message was brought from the Commons, by Mr. Paul Foley and others: who did, in the name of the House of Commons, and all the Commons of England, impeach the earl of Salisbury and the earl of Peterborough of high-treason, in departing from their Allegiance, and being reconciled to the Church of Rome; and that they will send further Articles against them in convenient time, and did desire that they may be committed.

Then the ensuing Order was made:

* This offence was constituted treason by the stat. 23 Eliz. c. 1, s. 2, and by 3 James 1, c. 4, s. 23.

VOL. XII.

"Whereas James earl of Salisbury and Henry earl of Peterborough stand impeached by the House of Commons of high-treason, in departing from their Allegiance, and being reconciled to the Church of Rome: It is ordered, by the Lords spiritual and temporal in parliament assembled, That the gentleman usher of the black rod attending this House do forthwith attach the body of Henry earl of Peterborough, and bring him in safe custody to the bar of this House."

The gentleman of the black rod gave the House an account, "That he had taken the earl of Peterborough; and he was now attending at the door."

Then he was called in; and, having kneeled at the bar, the Speaker acquainted him, "That their lordships had received an Impeachment from the House of Commons against him, for high-treason, in departing from his allegiance, and being reconciled to the Church of Rome; and that they would send further Articles against him in convenient time, and desired that he might be committed."

Then his lordship spoke to this effect:

"I am sorry it is my fortune to come before your lordships as a delinquent. As for the rest, I desire, that, if I am to be committed, I may

4 K

have a copy of what is objected against me, and time to answer, and counsel allowed, and them and my friends (considering the name of the treason) to come to me: and I shall be ready to obey your orders, whatsoever they be."—And so withdrew.

Ordered, That the chief governor of the Tower of London, his deputy or deputies, do take into his custody the body of the said Henry earl of Peterborough, and keep him in safe custody, until he shall be delivered by due course of law.

Ordered, That the chief governor of their majesty's Tower of London, his deputy or deputies, do bring to the bar of this House, on Monday next, at ten o'clock in the forenoon, the said James earl of Salisbury, now in his custody.

Ordered, That the earl of Peterborough, now prisoner in the Tower of London, shall be allowed to have his lady, friends, and servants, to have access to him, so as the governor of the Tower of London do give this House an account of the names of such persons as shall come to his lordship.

October 28.

The lord Lucas, chief governor of the Tower of London, acquainted the House, "He had brought the earl of Salisbury, according to their lordships order."

Who being brought to the bar; having kneeled: the Speaker, by directions of the House, told his lordship, "That he stands impeached by the House of Commons, and in the name of all the Commons of England, of high-treason, in departing from his Allegiance, and being reconciled to the Church of Rome: and that they would send further Articles against him in convenient time; and that they desire he may be committed."

The earl of Salisbury said to this effect:

"I went abroad young, and was seven years out, and did not return a year before I was committed. As for my religion, when I come to defend it, I will defend myself as well as I can: I hope this honourable House doth not expect I should accuse myself."

After this, his lordship withdrew; and the House made the ensuing Orders:

"Whereas James earl of Salisbury stands impeached by the House of Commons of high-treason, in departing from his Allegiance, and being reconciled to the Church of Rome: it is ordered, by the Lords spiritual and temporal in parliament assembled, That the chief governor of the Tower of London, his deputy or deputies, do take into his custody the body of the said James earl of Salisbury, and keep him in safe custody until he shall be delivered by due course of law; and this shall be a sufficient warrant on that behalf.

"Ordered, That the earl of Salisbury, now prisoner in the Tower of London, shall be al-

lowed to have his lady, friends, and servants, to have access to him, so as the governor of the Tower of London do give this House an account of the names of such persons as shall come to his lordship."

October 2, 1690.

Upon reading the Petition of the earl of Peterborough: shewing, "That he hath been kept prisoner in the Tower for almost two years, notwithstanding a dissolution and several prorogations of parliament have intervened,* as also an act of free and general pardon; and praying to be discharged by order of this House."

Ordered, That all the judges do attend this House on Monday next, at 10 o'clock in the forenoon, to give their opinion, "Whether the earl of Peterborough be pardoned by the act of the king and queen's most gracious, general and free pardon."

Upon reading the Petition of the earl of Salisbury; shewing, "That he hath been a prisoner for a year and nine months, notwithstanding the late act of free and general pardon, and praying to be discharged:"

Ordered, That all the judges do attend this House on Monday next, at 10 o'clock in the forenoon, to give their opinions, "Whether the earl of Salisbury be pardoned by the act for the king and queen's most gracious, general and free pardon."

October 6.

The Judges did deliver their Opinions, "Whether the crimes of the earl of Peterborough and the earl of Salisbury be pardoned by the act of the king and queen's most gracious, general and free pardon." And they were of opinion, "That if their crimes and offences were committed before the 13th day of February, 1688-9, and not in Ireland, nor beyond the seas, they are pardoned by the said act."

After a long debate; this question was put, "Whether the earl of Peterborough and the earl of Salisbury shall be now discharged of their imprisonments?" It was resolved in the negative.

Then this question was put, "Whether the earl of Salisbury and the earl of Peterborough shall be admitted to bail?" It was resolved in the affirmative.

They were accordingly both ordered to be admitted to bail.

This day, the Lords appoint a Committee to inspect and consider precedents, "Whether impeachments continue in *statu quo* from parliament to parliament?†"

* The parliament had been dissolved the 6th of February, and a new parliament met the 20th of March 1690.

† "The same question was raised, just a century after, on the 9th of December, 1790, in the case of the impeachment of Warren Has-

October 30.

After considering the precedents that had been reported from the Committee, appointed to consider, "Whether impeachments continue *in statu quo* from Parliament to Parliament?"

tings, esq.; but very few persons were found, in either house of parliament, to maintain, 'That the act of the crown in dissolving the parliament could, by law, put an end to a criminal prosecution, instituted by the House of Commons on the part of the people.' Whoever will consult the report of precedents, made to the Lords from a Committee appointed for that purpose (and which was ordered to be printed on the 19th of April, 1791) and will read the printed debates in both Houses, on that question, will be convinced, that the arguments, on which the decision was founded, 'That impeachments do continue *in statu quo* from Parliament to Parliament,' and which produced so large a majority both in the Lords and Commons, were drawn from what had been the ancient course and methods of parliament in former instances of impeachment; and that this practice, in cases of impeachment, was analogous and conformable to the invariable course of precedents in all other judicial proceedings, before the House of Lords, even from the earliest times.—See several of these precedents in the note †, in p. 74, of this volume.—A very judicious and clear argument upon this subject was printed in 1791, intitled, 'A Review of the Arguments in favour of the continuance of impeachments notwithstanding a dissolution,' by a Barrister; supposed to be written by the hon. Spencer Perceval. The numbers on the division in this question in the House of Commons were 143 to 30; and in the House of Lords 69 to 20.* 4 Hatsell's Precedents, 253, Ed. 1796.

This question was proposed, "Whether James earl of Sarum and Henry earl of Peterborough shall be now discharged from their bail?"

Then this previous question was put, "Whether this question shall be now put?" It was resolved in the affirmative,

Then the main question was put, "Whether James earl of Salisbury and Henry earl of Peterborough shall be now discharged from their bail?" It was resolved in the affirmative.

"Leave having been given to any lords, to enter their dissents, if the question was carried in the affirmative: and these lords following do enter their dissents, in these reasons:

"1. Because we conceive it is a question not at all relating to the real debate before us; but urged upon us, not for the sake only of the two lords mentioned.

"2. Because we ought to have examined precedents of pardons, to see how far an impeachment was concerned, before we had adjudged the lords discharged; or whether an impeachment could be pardoned without particular mention in an act of grace; and what difference there is between an act of grace and an act of indemnity.

"3. Because we did not hear the House of Commons, who are parties, and who in common justice ought to have been heard before we had passed this vote.

"Bolton; North and Grey; Stamford; J. Bridgewater; Bathe; Mablesfeld; Granville; Herbert."

They were both discharged accordingly.*

* "This being a case of impeachment, it may be doubtful, whether the Lords did right in discharging the parties accused, without giving the Commons an opportunity of being heard." Foster's Cr. Law, p. 151.

376. Proceedings against MATTHEW CRONE, for High Treason: 2 WILLIAM & MARY, A. D. 1690. [From the Diary of Henry Earl of Clarendon, and Narcissus Luttrell's MS. "Brief Historical Relation."]

Thursday, March 6, 1690.

ONE Mrs. Clifford's house was searched last night, about midnight, for one Crone; who, they say, came lately out of France. He was betrayed by one Fowler, who came over with

* This Henry earl of Clarendon (of whom some particulars are related in p. 144, of this volume) in his own account, as printed in the text, gives ground for a suspicion that he was not altogether unconnected with Crone, and he was himself about this time committed to the Tower upon a charge of high treason. Of the proceedings against him and various other persons, many particulars are related in his

him. But Crone not being found, the messenger seized Mrs. Clifford, and carried her away this morning to his house. About noon, Crone was taken upon the Exchange, and brought before my lord Shrewsbury, who committed him close prisoner to the Tower for

Diary, and also in Narcissus Luttrell's Brief Historical Relation, &c. From the latter work, I will select one extract:

"June, 1690. A great discovery is made of a dangerous conspiracy that was carrying on in this kingdom against this government, by Papists and other disaffected persons inviting the French here upon our coast, giving them an account of affairs here, and the posture of

high treason, in levying war against their majesties.

"Monday, May 19, 1690. Crone's trial, which had been put off once before; and it being alleged, that one of the witnesses was not to be found, it was put off till Friday fortnight.

"Friday, June 6. Crone was brought to his trial; in which were many remarkable passages. The judges were very severe, especially the chief baron. The jury sat up all night.

"Saturday, June 7. About noon the jury brought in their verdict, that Crone was guilty;

our fleet, so that the French intended to have met with our fleet at anchor and burnt them, and then they were to have landed a body of men here with whom the mal-contents were to join, and accordingly the French came and had surprised the English fleet at anchor (if it had not pleased God to becalm them for six or eight hours off of Plymouth, whereby the express came timely enough for our fleet to weigh anchor and get to sea: at the same time that this was carrying on here, another plot was carrying on in Scotland for subverting that government.

"Several persons have been taken up there, and others have absented themselves; and here, in this kingdom, many warrants have been granted for taking up several persons; many are already taken up, as the earl of Clarendon, lord Newburgh, sir John Fenwick, Mr. Stafford (son to the late lord Stafford) lord Forbes, Mr. Knevet Hastings, are committed to the Tower; and captain Ryder, Charles Turner, sir Nicholas Butler, captain Oliver St. George, are sent to Newgate; Mr. Pepys and sir Adam Blair to the Gatehouse: it is said all their warrants run for high treason, in corresponding with their majesties enemies; warrants are out, and messengers in search for several others, as the earls of Aylesbury and Litchfield, sir Roger L'Estrange, &c.: we hear not on whose information this is; some think Crone, others Gadsbury; it is yet uncertain. Captain Hatton, brother to the lord Hatton, is committed to the Tower for handing to the press a treasonable paper against the government.

"The lord Griffin's son and major Mathews, are taken up and sent to the Tower for treason, and sir Henry Shiers to Newgate.

"The earl of Clarendon made his prayer in the court of King's-bench according to the Habeas Corpus Act, to be either bailed or tried; but was told it was too late, it not being in the first week of the term as required. Bishop Labourn and bishop Gifford came up also by Ha-

* See Eliz. Cellier's Case, vol. 7, p. 1043.

"June 10, 1690. John Gadsbury, the astrologer, was taken up by a warrant from the secretary of state and committed to prison." Narcissus Luttrell's MS. Brief Historical Relation, &c.

though one of them declared, he was not satisfied that the evidence spoke truth; and he urged sir Robert Atkyns's book in defence of lord Russel's innocency; (see vol. 9, p. 719,) but it signified nothing. The prisoner being then asked, why sentence should not be awarded against him, he said, there was an error in the indictment before the grand jury; that the bill was indorsed *Billa verra* instead of *vera*. The king's counsel not being there, it was put off till five in the afternoon; and then the prisoner insisting to be heard, the court appointed to hear it argued on Thursday next, and assigned counsel to the prisoner: in the mean time sentence was respited.

"Whitsunday, June 8. In the morning Mrs. Clifford was with me. She told me, she had been to see Crone; that he was in a rage to think of death; that he said, he was too young to be a martyr; and that she did believe, rather than die, he would tell all he knew.

"Monday, June 9. Mrs. Clifford told me, she had been again with Crone; that he was in a better humour, and talked courageously.

"Thursday, June 12. In the morning Crone's plea was argued and over-ruled. The three chief judges and Eyres were in court.

"Thursday, June 19. In the morning, lord Nottingham went to Crone in Newgate, upon a letter (as was said) he had from him last night. My lord (as it is given out) urged him much to confess, that he might deserve his life; but

beas Corpus desiring to be bailed; but being in a time of public danger, they were ordered to tarry till the last day of the term.

"July. The earl of Yarmouth is brought up out of the country, under the custody of a messenger.

"Several of the eminent and noted Roman Catholics are taken up and committed to prison.

"Lieutenant colonel Vaughan is also committed to prison, and sir Lionel Walden upon account of this new plot.

"Bernard Howard, esq. and colonel Butler, are both taken up and committed to the Tower. Captain Frogmorton is taken up and committed for high treason.

"July 8. The lord Griffin* is also taken up and sent to the Tower for high treason.

"The earl of Yarmouth came up to the King's-bench by Habeas Corpus from the Tower; and, upon the return, it appeared he was committed by a warrant from the lords of the council, being charged with high treason, in abetting and adhering to the king's enemies. He prayed, by his counsel, to be bailed, and they took several exceptions to the warrant of commitment; which the whole court thought not material, so he was denied to be bailed, and remanded to the Tower."

* See something concerning him in a Note to the Case of lord Delamere, vol. 11, p. 509.

the fellow said, he had told all at his trial, and that he knew nothing more. Upon which his lordship said, he doubted he should see him no more, for he would certainly die to-morrow, if he did not confess; but he would acquaint the queen with what he had said. In the evening lord Monmouth and lord Lincoln were at Newgate, pressing Crone to make a full confession, making him many fair promises, in case he would be ingenuous: but he still said, he could say nothing. At ten at night Mr. Finch brought him a reprieve till Wednesday next.

"Wednesday, June 25. Crone was this day to have been executed; the sledge was at Newgate, and all the people thronged together, as usual upon those occasions; but he was again reprieved, in hopes he would deserve his life by the confession he might make."

[Thus far from lord Clarendon.]

The next day, June 26, he was sent for, as appears by the following warrant.*

'These are, in his majesty's name, to require you to bring Mr. Matthew Crone, a prisoner in your custody, attainted of high-treason, to my office in Whitehall this afternoon; for which this shall be your warrant. Given at the court at Whitehall, the 26th day of June, 1690. NOTTINGHAM.'

To major Richardson, Keeper of Newgate.

By the following List of persons excepted out of the Act of Indemnity, which passed 1690, one would think this Mr. Crone was a person of some consequence. Their names were,

W. marquis of Powis.	Sir Richard Holloway.
Rt. earl of Sunderland.	Sir Richard Heath.
R. E. of Castlehaven.	Sir Roger L'Estrange.
Nl. ld. b. of Durham.	Edward Petre.
Henry, lord Dover.	Thomas Tildesley.
Sir Edward Hales.	Rowland Tempest.
Sir Francis Wythens.	Obadiah Walker.
Sir Edward Lutwych,	Richard Graham.
Sir Thomas Jenner.	Robert Lundy.
Sir Nicholas Butler.	— Townley, com-
T. earl of Huntingdon.	monly called Colonel
John, lord Milford.	Townley.
Thomas, l. Howard.	Edward Morgan.
Thomas, ld. b. of St.	Robert Brent.
David's.	Philip Burton.
William Molineux.	Matthew Crone.
Sir Edward Herbert.	

How long he lay in Newgate does not appear; but that he was a considerable time in custody, appears by Mr. Crone's letter to major Richardson, though without date, and printed as wrote.†

To Major Richardson.

"Sir; If you please, I would be glad you

* "From the Collection of Papers of major Richardson, many years keeper of Newgate, in the hands of the Editor." Former Edition.

† "From the original letter among major Richardson's papers." Former Edition.

would let me have a chamber in the press yard; not that I would expect any more libertie theire than I have hear. Only I am desirous to be in the hearing of people, for you cannot be unsensible how troublesom itt is to your servants, nay sometimes to yourselfe, when you are pleased to chide my mother for staying so late; but beleive me, Sir, she cannot help it, for none can heare us, and it is unserting when any body comes to let her out, which some-tymes obliedges her to neglect mybusiness when it should be lookt after, therefore I know it is the same thing to you whether I lye theire or heare. You are sencible how long I have laine under uncertainties, and I can see no alteration, therefore am ashamed to request or petition for any more liberty than I have hitherto had, though God knows I much want it, as you may believe, haveing been very neare three quarters of a year close prisoner heare and in the Tower, and with my confinement as could comfort as ever poore criminall receivd. Pray, Sir, excuse me for this; since I can never have the honour of seeing you. I desire my humble service may be given to your good lady and the reast of your family; and that if it stands with your likeing, I may be removed; if not, assure yourselfe I shall at all times willingly comply with that which may seem most agreeable to you, and am, Sir,

Your reall friend and humble servantt,
Thursday Night. M. CRONE."

The famous, or rather infamous, Mr. Fuller in his pamphlet, intituled, "A Brief Discovery of the true mother of the prince of Wales," p. 24, says, (if he is to be credited) "Mr. Crone, with myself, was sent to England with several commissions and letters from king James, for raising men."—Page 28, "After my last return from France with Mr. Crone, I informed his majesty of all I knew: Mr. Crone was seized, and sent prisoner to the Tower."—Page 29, "They (the jacobites) finding their whole design unraveled, and that I had discovered all I knew, and Mr. Crone safe, and to be suddenly tried, which might make him confess, they (the Jacobites) got me poisoned, in hopes to have prevented Crone's trial: but it pleased Almighty God to restore me to my health after ten weeks sickness. I was able to come to the Old Bailey, where Mr. Crone was tried and condemned for high treason. He had several reprieves from time to time, on his promise of making a full confession; but as he was lingering it out, about six months after his conviction, I received a letter from the earl of Melford, king James's secretary, in which I was promised king James's pardon, and all the favour I could desire from him and the court of France, and 500*l*. if I would return to France, and recant what I had done. I carried this letter to king William, who sent me to Lord Chief Justice Holt for his advice; but his lordship was of opinion, it was all a trick to invalidate my evidence, they being apprehensive of Mr. Crone's confessions, which they

must know would be so agreeable to my informations, that the heads of king James's party had been entirely at king William's mercy: And this matter highly concerned the French court; for had Crone been just to him that gave him his life, there might have been but small encouragement from England to the French, and consequently no plotting now. They of king James's party made it their interest to have Crone hanged, and stop his mouth: and that, as I am well informed, occasioned his making almost a full discovery: Though he went for France, as soon as he was let out of Newgate, being invited back with great promises. I must thank him for his justice to me in his last and most authentic confession: He affirms on oath, That all my information was true. For the confirmation of this, I appeal to any member of parliament that heard Mr. Crone's or lord Preston's confessions read before that honourable house. After this, it may seem strange to some, how the House came to be so angry with me. I beg leave to inform them, That the Jacobites, by Mr. Crone's going off, knew they had partly secured themselves from the just power of the law."

See the Proceedings against William Fuller, A. D. 1702.

A REPORT OF THE PROCEEDINGS AGAINST MATTHEW CRONE. *From the All Souls MS. "Brief Historical Relation," &c. by Narcissus Luttrell.*

[In addition to the account of Crone's Case, published as above, in preceding editions of the State Trials, I will here insert a report of the proceedings against him, which I have found in the valuable All Souls MS. "Brief Historical Relation," &c. by Narcissus Luttrell.]

"June 6, 1690. Mr. Crone was tried at the sessions at the Old Bailey, which held nine hours, where three witnesses swore positively against him, that he did receive a bill of exchange to buy arms and raise men, and also transmitted money into Scotland for king James. He made a very slight defence; the court left the matter very plain to the jury, who withdrew about three in the afternoon, and a tipstaff being sworn to keep them, they lay by it all night, (one standing out against the other eleven, to find him not guilty) and so till twelve at noon the next day, when they all agreed to find him guilty of high treason: then being asked why judgment of death should not be pronounced against him, he took exception to some matters in the indictment, and desired to have counsel assigned him to argue the same. The exception was to the indorsement on the back of the indictment, be-

ing *billa verra*, with a double R for *vera*, the council desired were Mr. Darnel, Mr. Thornbury, Mr. Selby, &c. which the court told him, to prevent clamour, they would grant it; but it was a favour had not been allowed in the two last reigns.

"12th. The judges met at the Old Bailey, when Crone was brought, and his counsel argued upon the mistake of *billa verra* for *vera*, after a long debate the judges upon the bench, namely the two Chief Justices Holt and Pollexfen, the Lord Chief Baron Atkins, and Mr. Justice Eyre, delivered their opinions *seriatim*, that the mistake of the indorsement was not sufficient to invalidate the proceedings upon the indictment, that the indorsement was no part of the indictment, but only for the memory of the clerk, to enter it on record. After which the Deputy Recorder passed sentence of death on him, as usual in cases of high treason; which being done, the prisoner thanked the judges for his fair trial, and their patience in hearing him, and desired they would intercede with her majesty for his pardon.

"The earl of Nottingham hath been at Newgate to examine Mr. Crone, and to take his confession, who seems inclinable to discover; he hath been already reprieved once or twice in order to the same, after a warrant signed for his execution."

[In this year, 1690, also occurred the Trial, before a Court Martial, of the earl of Torrington (Herbert), for his conduct in the action off Beachy, on the 30th of June, in the same year. Of this Case, a report would be interesting, because it would illustrate an important topic of English History, and because, moreover, the Case involved a question concerning the Privilege of the Peerage, and another concerning the identity of the powers possessed by a Lord High Admiral, and by those Commissioners appointed to execute that office, and gave rise to the statute (2 W. et M.) "concerning the Commissioners of the Admiralty." I conjecture, that the Minutes of the Court Martial are in existence, because Dr. Campbell repeatedly refers to them in his Life of lord Torrington; yet they are not to be found among the Papers of the House of Lords, House of Commons, or Admiralty Office, which have been carefully searched by the respective permissions of Mr. Speaker of the House of Commons, Mr. Rose, and Mr. Croker. Among the Papers of the House of Commons, there is the Speech or Narrative of lord Torrington, delivered in the House on the 12th of

November, accompanied with a drawing. I possess the same Speech, together with an engraving, published in the year 1710. Burnet speaks with displeasure of the composition of the Court Martial, and with anger of their acquittal of Torrington, as reflecting on the justice of the nation. It is not impossible that a report of this case may yet be found.

I find the following mention of lord Torrington, in Narcissus Luttrell's MS. "Brief Historical Relation," &c.

* July 10, 1690. Lord Torrington came to White-

hall, the council sitting: and after some stay in the secretaries' office, a serjeant at arms came to him with a warrant, to carry him to the Tower, for high misdemeanours.

"We hear the lord Torrington hath a new warrant for high treason laid upon him.

"We hear that the Dutch ambassador here, presses very much for the trial of the lord Torrington.

"July 23. The Judges have had several meetings to consult about the trial of the lord Torrington, and whether, being a peer, he can be tried by the Court of Admiralty."]

377. The Trial of WILLIAM ANDERTON, Printer, before the Lord Chief Justice Treby, Baron Powell, Sir John Fleet, knt. Lord Mayor, and Sir Salathiel Lovell, knt. Recorder, at the Old-Bailey, for High Treason: 5 WILLIAM & MARY, A. D. 1693. [As printed in the Sessions Paper of that Time.*]

ON Thursday, June 1, 1693, in the afternoon, William Anderton, printer, was brought to the bar, and an indictment of high-treason was read against him; for that he did compose, print, and publish, two malicious, scandalous, and traitorous libels. The first entitled, "Remarks upon the present Confederacy, and late Revolution in England." The second, entitled, "A French conquest, neither desirable nor practicable."

After the Indictment was read, the Prisoner pleaded, Not Guilty; and the court, upon his request, ordered him a copy of the pannel, and gave him till Saturday to prepare for his trial: accordingly on Saturday morning, about nine of the clock, he was again brought to the bar, and the gentlemen that were summoned to appear to try the issue were called over, and their appearances recorded, and the prisoner had liberty to make his exceptions, according to the prescription of law, which he did, to the number of thirty-five, being the full number, &c.

The jurors sworn, were these gentlemen whose names follow, viz. Crispe Grainge, Joseph Blisset, Joseph Bowler, John Hynde, Robert Hinde, Simon Smith, Tho. Ramidge, Robert Longland, Ralph Hutchinson, John Outing, Samuel Freebody, Moses Colwell.

Then the king's counsel opened the nature of the matter of fact contained in the indict-

ment, telling them, That the offence that was contained in it was high-treason in the highest degree, viz. The compassing and designing the death of the king and queen; and there must be some overt-act to discover the intention of the man: and that which made the overt-act in this case, was in composing, printing, publishing, and dispersing of two treasonable libels, as they had heard read to them; in which there was contained the rankest, vilest, and most malicious treasons that ever could be imagined by any man to be put into paper; for he had no other name for the king, but the prince of Orange; and the design of it was merely to incite all the king's subjects to stir up, and raise war and rebellion against him, and to restore the late king James.

After which, the evidence for the king were called and sworn: the first of which was Mr. Robert Stephens, messenger of the press, who declared, That he had known the prisoner for above these two years to be an offender against the government, in printing seditious libels, but never could tell where he worked, until on the second day of May last, spying two journeymen printers, who he had missed from public-printing-houses this half-year, he followed them, and saw them go exactly into the house of one Skudamore, (where the prisoner was found), and where he suspected they worked privately: so having got the beadle, and another person or two with him, to assist him, he went to the door, leaving the others a little way off, to avoid any suspicion, &c. When he came to the door, he first asked, What lodgers they had; then turning his head aside, he saw the prisoner's mother in the yard, and she well knowing Mr. Stephens, she im-

* "The Trial of Anderton, as printed in the Sessions Paper, as also his Trial published by his friends, are both here inserted, for the Reader's satisfaction, and they left to make their own observations on them." Former Edition.

mediately cried out Thieves, and came up to him, (her daughter, the prisoner's wife, being with her) fell upon him, and tore his hair off his head, crying out Murder; at which time the prisoner came out of the house, and fell upon him, and abused him in a very uncivil manner, telling him, he scorned to be a subject to Hook-Nose. Then the beadle and the other person came to his assistance, and took the prisoner, but not without a great deal of trouble.

Mr. Stephens, and the others who were with him, made a particular search, and in a chamber, which the landlady said was the prisoner's lodgings, and that he went by the name of Williams, and a lapidary by trade, and where he owned he had been asleep. There they saw him shoving a bed, which run upon wheels, close up against a wall, which gave suspicion to Mr. Stephens to remove it; which having done, there he found a door which opened with a latch, and entering a room, there he found a printing-press, letters, and all other materials fit for the trade; and searching further, he found, in an old trunk, a great quantity of libels, and libellous pamphlets, one entitled, "A Caution to the Navy;" Another, "An Historical Romance upon the Wars;" A third, "A Second Letter to the Lord Bishop of Salisbury;" and there was an Errata, and an &c. found set in the press, the very same that were in the book, called "Remarks upon the Confederacy;" and in the chamber where he lay, there was a desk, (which Mr. Stephens knew well to be the prisoner's, because he had seized it before) in which desk there was found the two libels, (as in the beginning of the trial) and divers others of the same sort, which desk the prisoner owned to be his. These they seized and secured, having first put their private marks upon the libels, that they might know them to be the same, and conveyed them with the prisoner to the lord chief-justice Holt's chamber in a coach; and being alighted at the door, whilst Mr. Stephens was looking money to pay the coachman, the prisoner made his escape through Serjeants-Inn, but was soon overtaken by the porter: he was examined by my lord, and committed to Newgate for high-treason; this was fully and clearly proved against him on the king's side, and the libels were some part of them read in court, in which was found abundance of base, vile, scandalous, and traitorous expressions, enough to make any honest Englishman to hate and abominate all such traitorous, disaffected principles. That libel, called "A Caution to the Navy," which was taken in the printing-room, was proved to be corrected by the hand of the prisoner; and those letters that were in the form, upon which the "Caution to the Navy" was printed, was also proved to be printed with one and the same letter and character, &c. as the libels he was indicted for.

Then the prisoner made his defence, telling the court, that the matter that was given in evidence against him, was not sufficient to

make it an overt-act, therefore could not be adjudged high-treason, praying, that he might have counsel allowed him to plead it, being a matter of law. To which he was answered by the court, that the question was, Whether he printed those treasonable books? Which plainly appeared that he did, for they were all found (with the press also) upon him, and his so printing of them was an overt-act in the judgment of the law; therefore the person so offending must be guilty of high-treason; desiring him, if he had any witnesses, to call them; to which he replied, that he had none, but desired that he might have leave to put the jury in mind of two or three things, which in general was the opinion of my lord Coke, as to matter of law in this case, who says, "That it must be done with the intention of the mind, and that it must be some injury done to the king's person, by buying a gun, or gunpowder, or poison, or the like, before it can be accounted an overt-act;" and there was no such thing proved against him. To which the court replied, that in primitive times, before printing was invented, writing was found to be an overt-act; and made high-treason; therefore printing was more manifestly an overt-act;* and there was no room for any counsel to be assigned him, for there was no matter of law for them to plead to, and therefore desired him not to give the court any unnecessary trouble. Adding, that it was the opinion of the whole court, that he had no grounds for such a plea; but if he had any thing to offer that might be any ways advantageous to him, they would very patiently hear it.†

Then the lord chief-justice Treby summed up the evidence to the gentlemen of the jury, telling them what dangerous consequence such treasonable libels were of; and that it was as great and malicious a treason as ever could be imagined; but especially when considered to be done against so good a prince, who had done so much for this nation, with so great a mind, and so good an intent. This was done only to exasperate and to stir up sedition and rebellion amongst us; therefore, if they did believe what the witnesses for the king had sworn, to be sufficient evidence, that he printed the libel, then they must find him guilty, otherwise acquit him.

Then the jury having withdrawn for about three hours time, they brought a verdict, that the prisoner, Mr. William Anderton, was guilty of high-treason.‡

* See East's Pl. Cr. ch. 2, § 56, and the authorities there cited.

† See a Note to the Case of Don Pantaleon Sa, vol. 6, p. 466.

‡ The Author of A Letter concerning sir William Whitlock's Bill for regulating of Trials in cases of high-treason, written 1695, page 1, says; "What good Englishman is not afflicted for the death both of Essex and Raleigh? Can any man that knows our laws, think sir Henry

The last day of the Sessions he was brought to the bar, and asked, what he had to say, why sentence should not pass upon him according to law? He read a Petition, wherein he desired the court would please to allow him counsel to plead to a point of law; the court told him, there was no matter of law did arise. Then he desired, that he might have a longer time than the rest; to which he was answered, that it was in the power of the queen, and not in the court.

Friday, June 16, 1693, he was executed.

Mr. Samuel Smith, the Ordinary, gives this account of Mr. Anderton, in his account of the behaviour of the criminals:

William Anderton, Printer, condemned for high-treason, in composing, printing, publishing, and dispersing malicious, scandalous, and traitorous libels: the design of it being to incite the king's subjects to war and rebellion against him, and to restore the late king James. He refused to come at any time to the ordinary; whereupon he went to the chamber of the said Anderton, and offered to pray with him, but he said, That he had such came to him, who gave him contentment: and after a second offer to pray with him, he refused it. The ordinary told him, that he ought to take care, that no man might extenuate his high crimes, nor flatter him with false hopes of heaven, men's hearts being very prone to deceive themselves in that respect; upon which Anderton said, Leave me to myself, I desire

Vane was fairly dealt with? That Plunket ought to have been tried twice? Sidney executed upon similitude of hands, and one witness? Sir Thomas Armstrong without a trial, before the outlawry compelled his coming in? Ashton upon presumptive treason? And Anderton against the plain sense of so many statutes? The blood of these, and many more, cry for vengeance, and admonish us to provide against such extravagancies hereafter. Colledge and Cornish call aloud for such a Bill. Had such a statute been in force, could the great lord Russel have died for only endeavouring to prevent the wild attempts of others; and because sir Thomas Armstrong had viewed the Guards? But it is needless to set down the several instances in other reigns, when the trials under this afford but too pregnant reasons to conclude, the judges very untoward counsel for the prisoner, and that jurymen may be biassed by piques and animosities; and also that well-meaning men of a jury ought to hear the law stated by such of the robe as are not in the pay of the crown; not only because the Bench too often prevaricates, but because the prisoners are often wearied out, as the great Raleigh was, with the clamorous harangues of the King's Counsel, and so drop their defence, when their lungs (which are not so well breathed as those of pleaders) fail them." Former Edition.

VOL. XII.

not to be further solicited or exhorted by you. Upon this the ordinary withdrew himself.

William Anderton for high-treason, and John Dudley, for clipping, were drawn on a sledge to Tyburn, and were first executed. The right worshipful the sheriffs being present, Anderton desired that his brother, and a minister his friend, might come into the cart, which was granted.

The Minister only prayed for him in the office of visiting the sick: when he had finished, and went out of the cart, the ordinary exhorted Anderton and Dudley to beg of God, that they might be examples of true repentance, and to warn the people by their sad untimely end, but they did not; therefore the ordinary commanding silence, spoke thus: Be persuaded by the sight of these dying persons, not to contrive any thing against the government of this kingdom; God will bring it to light, and in justice punish it; and exhorted the people not to prophane the Sabbath, which all criminals bewail when they come to die publicly, as that sin which brings on all other crimes. Anderton told the spectators, that his sentence was very hard and severe. I told him, that he had endeavoured to overthrow the established government. He said, that he forgave his judges. I replied, that they needed not his forgiveness, for they were satisfied in their consciences that they had acted justly. Then I prayed with them, and they had a considerable time to pray for themselves, which they did fervently. Anderton's carriage was with much confidence. There was a Paper came to the sheriff's hand for the suspending the quartering of Anderton. He thought it to be a reprieve, which did much affect him with thanksgiving to God; but understanding it was only that his dead body should be delivered to his friends, he did not acknowledge that as any great favour. After they had prayed for themselves, the ordinary committed them to God's mercy, with a short prayer at last: so praying again for themselves, they gave a sign, when they expected to be executed, and the cart thereupon drew away.

The TRIAL of WILLIAM ANDERTON, Printer, at the Old-Baily, before the Lord Chief Justice Treby, Mr. Justice Powell, sir John Fleet, knt. Lord Mayor, and sir Salathiel Lovel, knt. Recorder of London. June 1, and '3, 1693, 5 Will. and Mar. for High-Treason*.

Mr. William Anderton knowing himself to be mortally hated by some persons, had absconded for a considerable time, as it had been the hard fortune of divers great and good men to do in these difficult times; but being betrayed

* "Taken chiefly from a quarto pamphlet, entitled, An Appeal of Murder, &c. wrote by Mr. Grascomb, a nonjuror. But Mr. Anderton was assisted in his defence by Mr. Thornbury, a counsellor at law, who, it is supposed, drew his plea, petition, &c." Former Edition.

to Mr. Robert Stephens, messenger of the press, and his sworn enemy, he was apprehended on the second of May, this present 1693; and Stephens, not content with his person, plainly plundered the house, carrying away goods to a considerable value, which there was no colour of law for him, or any man else to seize; and this, I suppose, might be one great motive to make him swear so desperately at the trial, that he might take away a man's life, who otherwise might come upon him for robbing him of his goods; the booty secured, away he goes in triumph with his prisoner, to my Lord Chief Justice Holt, where he railed against him in a very indecent manner; the judge was very calm, and said very little to the matter; but, upon the accusation, committed Mr. Anderton to Newgate, not for high-treason, as is falsely alledged; that judge knew the law better, and, I believe, is not in himself so very forward to over-strain it. Whilst he stood thus committed for misdemeanor he was bailable; and accordingly very sufficient bail was offered for him; but Aaron Smith, who wisely weighs what advantage is to be made of every prisoner, and considers not only the person himself, but the interest he is engaged in, and the friends he may be supposed to have, thought too few guineas were offered; and therefore still kept off the bail, endeavouring to make a better market; but while things hung thus between the bail and the bail-master, on a sudden the controversy was ended by the coming of a fresh warrant upon the former: which committed the prisoner for high-treason.

The trial began Thursday, June 1, but respited till the Saturday following, June 3, that this scene might be acted with the greater solemnity; Mr. Anderton being brought to the bar, was arraigned, and pleaded not guilty, and made it his request, that he might have a copy of his indictment; but it would not be granted. The crime laid to his charge was, the composing, printing, and publishing, two malicious, treasonable libels: the first entitled, "Remarks upon the present Confederacy and late Revolution in England:" the second, "A French Conquest, neither desirable nor practicable."

The principal evidence against the prisoner was Robert Stephens, the messenger of the press, who made oath, That coming to Scudamore's house, where the prisoner lodged, and asking what lodgers they had, he saw the prisoner's mother in the yard, who crying out murder, the prisoner came out of the house, and fell upon him; and that at the time of Mr. Anderton's apprehension, he did in words disown the government, and called king William hook-nose, not submitting himself: that he took at the said house an old trunk filled with seditious papers and pamphlets, and that he had seen the trunk formerly, and knew it to be Mr. Anderton's, and that he also found a desk, and took out of the said desk forty or fifty of a sort of "The Remarks,"

and "French Conquest*," and that he saw the prisoner shove up a bed, which run upon wheels, behind which was a door, which he opened, and there found a printing press, letters and other materials proper for that trade; that he also found an errata, with an &c. set in the press, the very same which he believed were in the book, called Remarks upon the present Confederacy.

Hooper, the beadle of Stationers-hall, seconded the aforesaid testimony, as also the constable and his beadle; they also alledged forty or fifty of the French Conquest to be there.†

* "As to the latter of these, it is now certainly known that he had no hand in it, and that it was printed at a press which he never saw, and by persons with whom, for a long time, he had no communication: for the government had at that time in their custody those persons, who knew when and where it was printed, and (as it was said) had made a discovery of all, perhaps, of more than they knew. The papers of that sort taken upon the prisoner were sent to him the day before he was seized: and some have a vehement suspicion, that it being resolved he should be taken the next day, those pamphlets were sent before-hand, that something might certainly be found upon him; but his innocence in that matter hath since been made evident to all the world, by an irrefragable testimony; for this September sessions at the Old Bailey, Price, in open court, made oath, That he, and the prisoners then at the bar, Newbolt and Butler, printed the French Conquest." Appeal of Murder, page 6.—Former Edition.

† "It is certain, there was not the fourth part of so many in the house, which were sent him the day before, and which the government itself now (if it did not then) well knows were not printed by him. And yet after all this multitude they were content to fall to one of each, that they might be particularly sworn to; and when Mr. Constable was asked, How he knew those to be the books, and was desired by the prisoner to read the titles of those books whereof he accused him, truly it appeared, that the gentleman had been bred to no such dangerous things as writing or reading. Now could a more unquestionable witness have been produced to printed books, and their titles, than a man that cannot read? But for a help at a dead lift, it was said, That he had made his private mark on the said books; but then it ought to be considered, that his private mark was made to the two books at the lord-chief-justice Holt's chamber, which Robin Stephens produced out of his pocket, when the prisoner was brought to be examined. Now what did his marks, set on two books at the lord-chief-justice's chamber, which were all the while before in another man's custody, signify to prove that those were the books, which were about four hours before taken out of a desk in St. James's? Robin Stephens might have produced what books he pleased, and in all likelihood, this

Besides Stephens, the constable, and the bea-
dles, there were also two printers sworn, viz.
Roberts and Snowden, (a dissenter to whom
Anderton was some time an apprentice) the
substance of whose evidence was, That they had
seen the characters in the hall, together with
the &c. and that they did believe it was the
letter that printed that book, (*i. e.* the book then
shewed in court) as also, That the two books
were printed with one and the same letter or
character.* Another witness made oath, that
about three quarters of a year before, he had
sold the prisoner paper, by the name of Wil-
liamson.

man would have set his private mark on them ;
but if he would have been sure, he ought to
have set his private mark at the time of their
being taken out of the desk." See an Appeal
of Murder, page 11 and 12.—Former Edition.

* "Now if this evidence be true, it ought
to have acquitted him ; if it be false, it
ought not to have hurt him. For the go-
vernment well knows where and by whom one
of the books was printed, and that it was
not printed by Mr. Anderton, nor had he
any manner of hand in it, or any communica-
tion at that time with those printers ; and if both
the books were printed with the same letter or
character, then I think it is a pretty fair and
clear inference, that he printed neither of the
said books, and consequently ought, upon this
evidence, to have been discharged. But be the
matter true or false, what signifies believing in
this case ? Is one man to be hanged for an-
other's believing ? Malice is put to its shifts,
when without any colour of legal evidence it is
forced to believe a man out of his life. But if
such evidence as this shall be looked on as
good and satisfactory in matter of life, I think
the whole society of printers are deeply con-
cerned in it, and that they are all in very dan-
gerous circumstances ; for I am assured by a
very understanding printer, that there is not a
printing-house in town, but hath of the same
sort of letter or character, so that upon such an
oath as this, any or all the printers of the town
might have been taken, and whom they thought
fit hanged. For there is none of them but had
characters as suitable to the book, as that which
was sworn to ; and if it had been seized, and
thus sworn to, they were as liable to be hanged
as Anderton. At this rate the government need
not give themselves the charge of a messenger
of the press, nor the trouble of such frequent
searches ; but as soon as any seditious or trea-
sonable pamphlet comes broad, it is but going
to the next printer's, and seizing his letter, and
having found some of the same sort of charac-
ter, to get a couple of rattle-headed fellows to
swear it, and hang him ; and thus they may
pick and chuse what printers they please to
hang. Was ever such a wise oath made by
two printers ? But Snowden was made choice
of, for his notoriously known malice against
the prisoner." See an Appeal of Murder, p. 13
and 14.—Former Edition.

The prisoner with a great deal of calmness,
and clearness made appear the insufficiency of
the evidence : he peremptorily denied any such
books to have been there, as sworn to, though
he owned the desk ; and he used an argument
to convince the bench of the truth of what he
said, drawn from the very evidence given against
him, viz. That the desk was small, and not
able to contain half so many books as were
sworn to be taken out of it ; and for proof, de-
sired that the desk might be brought into court,
for the jury's satisfaction ; but this request was
not complied with, and the matter put off saying,
the number of books was only matter of supposal.
But then from this false supposition of the proof
of matter of fact, there arose matter of law, viz.
Whether printing were treason ? And in con-
sequence hereof, whether it were within the
purview of the statute of 25 Edw. 3? To this,
the prisoner desired he might have the benefit
of counsel, and pleaded his right to it, urging
not only the privilege of every Englishman, but
that it was the practice of all our courts of jus-
tice, and that no man was denied counsel where
any point of law arose ; and instanced in the
case of Sidney and others, to whom the judges
freely and readily assigned counsel as to mat-
ter of law, and owned it to be their right. But
the court peremptorily denied to him, what was
(as the learned in the law tell me) never denied
to any man before, counsel as to matter of law.
Being thus shamefully over-ruled, he was con-
strained to be his own counsel, and delivered in
the following Plea.

Mr. Anderton's PLEA at the Old-Bailey.

My lord ;

I have a few things, humbly to offer to your
lordship's consideration, as to this indictment.

1. As to the compassing, or imagining the
death of the king and queen, my lord Coke
saith expressly in his 3^d Inst. p. 6. That it is
the very rule of the act, that 'Actus non facit
'Reum, nisi Mens sit Rea ;' and if the said act
be not within the express words of the act, then
by force of a clause hereafter, viz. 'Et pur ceo
'que plusers auters ne,' it cannot be adjudged
treason, until it be declared treason in parlia-
ment ; which is the remedy which the law-
makers have provided in that case.

2. As to the levying war, he says, p. 9,
That a compassing, or conspiring to levy war
is no treason ; for there must be a levying war
in facto. Pag. 10, he says, in citing the lord
Dyer's case, in sir N. Throgmorton's, that dur-
ing the life of the queen, viz. Eliz. a conspiracy
to levy war was high-treason, though no war
levied : but when Bradshaw and Burton, and
others, were indicted of high-treason, for con-
spiring to make war, it was resolved by all the
judges, that it was no treason within the 25
Ed. 3. for the words of this law are *Levis
Guerre* : An actual rebellion, or insurrec-
tion is a levying war within this act ; as if any
with strength and weapons invasive and defen-
sive, doth hold and defend a castle or fort against

the king and his power ; that is levying war within this statute.

3. Adhering to the enemies of the king and queen. This, my lord, in the same p. 10, he likewise explains ; viz. in giving aid and comfort to the king's enemies within the realm, or without, delivery or surrender of the king's castles, or forts, by the king's captains thereof, to the king's enemies within the realm, or without, for reward. This, says he, is adhering to the king's enemies, and declared treason by this act : And for this, my lord, he cites several acknowledged authorities and acts of parliament.

4. As to the proof of these, or any of these particulars, the said lord Coke, p. 12, explaining this branch of the statute, ' Et de ceo provablement soit attaint per overt fait per gens de leur condition,' saith thus ; which, gentlemen of the jury, I beg of you take particular notice of. In this branch, saith he, four things are to be observed ; but I shall only take notice of three, first, this word ' provablement,' probably, i. e. upon direct and manifest proof, not upon conjectural presumptions, or inferences, or strains of wit ; but upon good and sufficient proof. And herein the adverb, ' provablement,' probably, hath a great force, and signifieth a direct and plain proof ; which word, the King, Lords and Commons in parliament did use, for that the offence was so heinous, and was so heavily and so severely punished, as none other the like ; and therefore the offender must probably be attained ; which words are as forceable as upon direct and manifest proof. Note, saith he, The word is not ' probably,' for the ' commune argumentum' might have served ; but the word is ' provably' be attained : And pag. 26, he tells us, that two witnesses are required, and I remember, saith he, no authority in our books to the contrary ; and the common law herein is grounded upon the law of God, expressed both in the Old Testament and the New. ' In ore duorum aut trium testium peribit qui interficietur. Nemo occidatur uno contra se dicente testimonium,' M. Bract. Fortes. 1 E. 6. 5 E. 6, 11. Secondly, This word ' attaint,' necessarily implieth that he be proceeded with, and attained according to the due course and proceedings of law, and not by absolute power, or by other means, as in former times hath been used. Thirdly, ' Per overt fait, per apertum factum.' This, saith he, doth also strengthen the former exposition of the word ' provablement,' that it must be ' provably' by an open act, which must be manifestly proved ; and this manifest proof he thus explains : As if, saith he, divers do conspire the death of the king, the manner how, and thereupon provide weapons, powder, poison, assays with harness, or sending letters to put this their conspiracy in execution. These, gentlemen of the jury, are the expositions of the unexceptionable lord Coke, whose authority I the rather chose to rely on, because his learning in the law, and his veracity in the delivery of his opinion, is universally acknowledged.

5. As to the fact alledged in this indictment, which is to prove the aforesaid crime, or otherwise the whole indictment falls to the ground ; and that, my lord, is printing. Now the question is, my lord, whether printing, as such, can be construed to be within the purview of this statute ? and I humbly conceive not ; because the statute of 1 Mary enacts, That no act, deed, or offence, being by act of parliament, or statute made treason, petit-treason, or misprision of treason, by words, writing, ciphering, deeds, or otherwise whatsoever, shall be taken, had, deemed, or adjudged to be high treason, petit-treason, or misprision of treason, but only such as be declared and expressed to be treason, petit-treason, or misprision of treason, in, or by the act of parliament made in the 25th year of the reign of the most noble king of famous memory, king Edward the 3rd, or any other declaration, or matter to the contrary, in any wise notwithstanding. Now, my lord, the world well knows, that printing was not practised in England till several hundred years after the making of this statute of 25 E. 3, and therefore impossible to be expressed, and consequently not treason. And it is likewise well known, that printing was in use in England long before the reign of queen Mary, and yet this statute positively excepts it, as not being mentioned in that of 25 E. 3. And my lord Coke, p. 23, says, That before this act of 1 Mary, so many treasons had been made, and declared by parliament, since that of 25 E. 3, some in particular, some in general, and in such sort penned, that not only the ignorant, but the learned were many times trapt and snared, and treasons made in one king's reign were abrogated in another. So that the mischief before 25 E. 3, of the uncertainty what was treason, and what not, became so frequent and dangerous, that the safest and surest remedy was by this excellent act of 1 Mary, to abrogate and repeal all but such as are specified and expressed in this statute of 25 E. 3. By which law, says he, the safety of the king and his subjects, is wisely and sufficiently provided for in such certainty, as ' nihil relictum est arbitrio judicis.' And p. 21, explaining the words, semblable treason, he says, In this case the judge shall not judge *a simili*, or by equity, argument, or inference of any treason, high, or petit, for no like case shall be adjudged treason, high, or petit, nor no other case, though of as high, or higher nature, shall be adjudged treason, high, or petit, as appeareth in the case of parricide. And p. 22, explaining this branch, ' Que n'est specifice paramount,' this word ' specifice,' saith he, is to be specially observed ; for it as much as to say, particularised or set down particularly, so as nothing is left to the construction of the judge, if it be not specified or particularised by this act. And, my lord, he breaks out into this rapture, A happy sanctuary for judges to fly to, that no man's blood, and ruin of his family, do lie upon their consciences against law ! And if that the construction by arguments ' a simili,' or ' a minori ad

'majus,' had been left to the judges, the mischief before this statute would have remained; viz. diversity of opinions, what ought to be adjudged treason, which this statute hath taken away by express words. And the statute 1 Mary, doth repeal all treason, &c. but only such as be declared and expressed in this act of 25 E. 3, wherein this word, 'expressed,' is to be observed. And again, my lord, on the branch, 'Tanque per d'evant le roy et son parlement.' By this, saith he, it is apparent, that any like case, or other case, ought to be declared by the whole parliament; and so it was done by the whole parliament in 3 R. 2, and many other acts of parliament. Nay, p. 24, he says, That no former judgment, attainder, precedent, resolution, or opinion of judges, or justice, of high treason, petit-treason, or misprision of treason, other than such as are specified and expressed in the said act of 25 E. 3, are to be followed, or drawn to example; for the words are direct and plain, that no act, deed, or offence, &c. shall be taken, had, deemed, or adjudged to be treason, petit-treason, or misprision of treason, but only such as be declared and expressed in the said act of 25 E. 3, any act, statute, declaration, or matter to the contrary notwithstanding. But now, my lord, to come a little nearer to the matter: how can bare printing be deemed in law an overt-act of compassing, or imagining the king's death? (which is the treason alledged), when it is so far from necessarily proving it, that it is ten times more natural to suppose that the printer (whoever he be) prints for his gain in his way of business, than out of any intendedly treasonable design. Besides, in treason books, the law ever looked severely after the author, or procurer, but very little, or not at all regarded the printer as such, being looked on in law as a mere mechanic, till the statute 13 and 14 Car. 2, c. 33, which makes it an offence, and allows the punishment, which is for the first offence, disability for following the trade for three years; and for the second, a perpetual disability and a fine, imprisonment, or other corporal punishment, not extending to life or limb. My lord, the very stile of the act is, 'An act for preventing abuses in printing seditious, treasonable, and unlicensed books and pamphlets, and for regulating of printing, and printing-presses;' which plainly shews, that the government was at a loss how to punish printing, as such, before; which the government could not have been at, if the printer had stood chargeable before, for matters and things contained in the books and pamphlets he printed. Nay, my lord, the very statute of 13 Car. 2, c. 1, which made several things treason during his life, did not, as I conceive, extend to the printer, but to such as should procure to be printed the treasons therein contained. I have but one thing more, my lord, to urge upon the matter, and that is the case of Algernon Sidney.

In short, he acquitted himself so well, that all indifferent persons were abundantly satis-

fied, and yet it proved to no more purpose than a Wall-Lecture.

In summing up the Evidence, two or three old, musty, impertinent precedents were brought in, which had not seen the sun for many ages, the chief of which was that of sir John Oldcastle, lord Cobham, and he might as well have urged the case of the Man in the Moon: for what was my lord Cobham's case to printing? That famous Wicklevite lived in the reign of Richard 2, some scores of years before printing was thought on, which came not into England till the reign of Henry 7; and the prisoner had very well observed, that what is not expressed in the statute, 25 Edw. 3, (and it is impossible printing should be expressed there,) is barred from being any ways adjudged, or interpreted treason, by the statute, 1 Mary. In short, in summing up the evidence to the jury, every thing was aggravated to the utmost, every little punctilio was made use of, which was thought might be any thing serviceable to beget in the jury an hard opinion of the prisoner; the bed with wheels was not let alone: every little trifle was fetched in, with all the witty malice imaginable; nay, the very soul of the man was looked into, and the jury told what was within him; he was an ill-minded man, a disaffected person; he was no lover of the government; and that printing was an overt-act: so the jury were sent out to consider of their verdict.

After two hours debate, the greater part of the jury became very well inclined to have found Not Guilty; but there was one amongst them who loved mischief, and he was for hanging men for being Jacobites, not for being guilty: and being since told of the severity of their verdict, he readily acknowledged, That the evidence did not amount to the proof of the fact; but, saith he, What of that? I believed he was guilty, and I will hang a hundred of them for half so much evidence.

When the jury appeared, the question was asked, Whether they were agreed of their verdict? A zealous man answered, No. Whereat the court frowned, and shewed themselves much displeased, when the foreman of the jury, (desirous that all men may have fair play for their lives) put this question to the bench, Whether the having those things by him, without making any further use of them, did affect the prisoner as to life? Now this question was very pertinent, though nothing pleasing; but after some frowning and pouting, the court answered, No. But that was not their business, they were to find it printing, and that was a sufficient overt-act.

Some of the Jurymen, by way of complaint, said thus: My lord, our foreman is of opinion, this fact is not proved. Court. Whether it be proved or no, you ought to determine; the bare finding the books in his custody would not be treason; but the case is, gentlemen, here is a man that has a printing-press, to which no man has admission but himself; and this man is found with an errata, and &c., so that he

must needs print the treason. To this a Jury-man answered, 'Tis a very strong presumption, my lord. And then baron Powell clenched the nail with this grave saying, A violent presumption is as much as if a man had been there and done it himself.

These Answers being returned to the questions, the Jury were sent back again, where almost three hours more spent in debating the matter, before they could come to a conclusion, and then complied, and brought in the prisoner Guilty. The court told them, That they had done like honest and good men, and had brought in a verdict agreeable to their evidence.* Sentence according to course, was put off to the last day of the sessions; in the mean time the prisoner, that he might save his life, or leave those who sought his blood without excuse, had a Petition drawn and delivered, which is as followeth:

To the Right Honourable Sir John Fleet, Lord Mayor of the City of London, and the rest of the Commissioners, for the gaol-delivery of Newgate: The humble PETITION of WILLIAM ANDERTON, a convicted prisoner in Newgate,

Sheweth; That whereas your petitioner has been by the jury found guilty of printing the books laid in the indictment, and thereby is concluded from questioning the legal evidence they had for it, though your petitioner humbly appeals to your lordships observations, and consciences, whether all that was sworn, came up to more than bare circumstantial evidence of his bare printing them; which in cases of treason, as your petitioner is informed,

* "For Anderton, who is the last that since the Revolution hath been executed for High-Treason of this kind, there needeth no more to shew both the perjury of the witnesses that swore against him, and the severity and hastiness of his conviction and condemnation, than that a person arraigned, and condemned since at the same place, hath openly confessed and avowed, that he printed and published the book, for which poor Anderton was cast and executed. Nor is it for the credit of those that sat as judges, or were upon the jury, that so infamous a fellow as Stephens was the principal witness at the trial, and the person upon whose testimony especially the arraigned was cast: for, besides his being universally known for a rascal, that will be purchased to perpetrate any villainy, provided he may find impunity in doing it, his whole behaviour at that time, when he gave his evidence, was so excessive rude and rancorous towards the prisoner, as might give any indifferent man a just cause to believe, that he was provoked by malice, or swayed by command, and encouraged by reward, to what he did." See a Letter to the right honourable sir John Holt, knt. Lord-Chief-Justice of the King's-bench, occasioned by the noise of a plot. The Second Edition, 1694, page 8 and 9.—Former Edition.

has never been allowed. And whereas your petitioner was advised, That bare printing these books (admitting the same was proved), could not by the laws be construed as an overt-act of treason in the bare printer; and your petitioner requested the court again and again, That this matter might be argued by his counsel, which the court were pleased not to permit. Your petitioner yet, notwithstanding, not doubting of your lordships inclinations, not only to do him all justice, but to shew him all the mercy and favour you can, that may consist with your lordships justice; and humbly conceiving, That this court, by further considering your petitioner's case, may, even yet, be capable of relieving your petitioner, especially, if, upon hearing what your petitioner can say, your lordships shall be satisfied, That your petitioner happened to be convicted through any error or mistake (as no man was ever exempt from error, and the best of men are always readiest to confess it). Your petitioner therefore humbly beseecheth your lordships patience, seriously to read and consider some few (of many) reasons which your petitioner hath heard from others, which he herein has set down as briefly as he can, as followeth: First, They lay down, that the treason laid in the indictment, being that of the intent of the heart, (expressed in the statute, by compassing and imagining the king's death) requires by law two proofs, the one of the fact, the other of the inference, and that both these must be plain: That of fact, (called the overt act), must be proved by direct and positive evidence by two witnesses at least, and not by circumstantials only (as this of printing was against your petitioner, there being no positive proof at all, not so much by one witness, given of his printing either of the books laid in the indictment.) And then that of fact being thus proved, must by necessity of inference as evidently and certainly prove, That the party in doing such overt-act, could intend, or imagine thereby nothing less than the king's death: and if either of these proofs fall short of such necessary certainty, such indictment must fail, the law, for great reasons, regarding only such plain and direct proofs in these great charges.

"Now, can a printer, *quatenus* only the printer of these books, be thereby inferred to assent to, and approve of the matters and things contained in these books, and that necessarily too, *quatenus* the printer? By the same legal logic, every printer may be proved to have in his heart, and approve of all the opinions, notions, and imaginations contained in all the books he ever printed: for a '*quatenus ad omne valet consequentia*.'

"'Tis true, (say they) writing and speaking have, in some instances, been accounted as overt-acts, and there might be good reason for it, as a man expressing his own mind by his own writing, and by his own words, which, according to the manner of his writing, or speaking, may evidently appear to come from his own heart: and your petitioner doth not

doubt, but that the writing a book, as in cardinal Poole's case, and the signing the warrant for the execution of king Charles the 1st, as in the case of the regicides, which cases were urged by some of the court against your petitioner, were sufficient overt-acts, to prove the compassing and imagining the king's death. But can these instances be any thing to the case of a printer, whose business it is, as a printer only, to print the thoughts of others, being accounted in law only as a mere mechanic, and whose end thereby is to get money for his work? And for further reason in this matter, they observe, That as it doth not appear that bare printing was ever pretended to be an overt-act within stat. 25 Edw. 3, so when the parliament of 13 Car. 2, carried up treason to the highest, for the preservation of the king's person during his life, and (among other things) particularly therein took notice of printing, yet would they not thereby lay so great a penalty upon the printers, as, no doubt, considering the unreasonableness of comprising such tools and mechanics, within an act intended for persons of higher designs: but this parliament kept the printers in their remembrance, as intending to consider them by themselves in another act, as they very soon after did; for the same parliament, in 13 and 14 Car. 2, made an act, which they stile, 'An Act for preventing abuses in printing seditious, treasonable, and unlicensed books and pamphlets, and for regulating printing and presses;' and therein, as they fix them their rules and bounds, so they allot them their punishment: which, for the first offence, is disability for three years; and for the second, perpetual disability, fine, imprisonment, or other corporal punishment, at discretion.

"Wherefore, the premises thoroughly weighed and considered, your petitioner humbly implores your lordships, that, in favour of life, in a new and extraordinary case, and that too, of high treason, your lordships would be pleased to extend so much mercy to your petitioner, as to suspend your judgment, and pronouncing sentence upon him, until your lordships shall have heard what can be further offered by counsel on his behalf. And your, &c."

This Petition speaks for itself: when the last day of the sessions came, and the prisoner was asked in course what he had to say, why sentence should not be passed upon him? He desired that his petition might be read; but the court not being willing to take notice of the knowledge of any such petition, thereby to elude his request, he foreseeing it, had provided one ready, and offered it to be read, but no man daring to take and read it, he took the freedom to read it himself, and then offered these things further in Arrest of Judgment.

His Plea in Arrest of Judgment.

My lord, in Arrest of Judgment, I have these things humbly to move:

1. Whether if a jury, not being competent judges of the matter of fact whereof they are

to judge, and bring in their verdict against the defendant contrary to law; I say, whether judgment ought to pass upon the defendant because of that verdict?

2. Whether if a judge (who is counsel for the defendant, and therefore indispensably bound to take particular cognizance of what the defendant urgeth in his own behalf, as well as what is alleged against him), in summing up the evidence, doth omit (out of forgetfulness, or otherwise) the only material point upon which the whole indictment is founded, and which the defendant so much urged in his own behalf; and also which inevitably led the jury into this mistake of their verdict; whether, I say, this be not sufficient to stay judgment?

3. Whether any judge, &c. can construe printing to be a sufficient overt-act, till it be so declared by parliament?

4. Whether the Stat. of 13 Car. 2, does not plainly intimate the contrary? And likewise the 13 and 14 Car. 2, lately revived?

The prisoner did make it his humble and last request, That these things being matter of law he might be allowed counsel to plead them, or any other matter of law, in his case. And he backed his request with this modest reason, That being matter of law, he thought the satisfaction of the judge's conscience concerned in it, as well as his life; but if his counsel could be satisfied, or fairly over-ruled in it, he would acquiesce without more ado.

The matter now lay wholly before the city recorder, sir Salathiel Lovell, who after a flourish or two of empty rhetoric, proceeded to pronounce that dreadful sentence which the law allots to treason; to have the heart and bowels torn out, and burnt, and the body dismembered, and the quarters set up, or disposed as authority orders.

Whilst Mr. Anderton was preparing for his death, his friends were struggling for his life: He had many friends upon the account of his known ability, industry, and integrity; others were taken with his manly behaviour, and clear pleading upon his trial; and many more were forward to move in his case, in pity or indignation, at his usage.

The queen (as still upon occasion it was answered) could do nothing without the council, nor the council without the queen; if the council was met, the queen was not there, or if she was there, there wanted such and such of the council, without whom nothing could be done; and thus things at every turn were shuffled off; but where the danger is imminent, and time short, persons are willing to watch hard, and look out sharp. Taking this course, his disconsolate wife had at last so fairly set the council, that it was thought they could not avoid giving her a direct answer: for though they were resolved he should not live, yet (the matter being so warmly debated amongst all sorts of persons) they were not willing to say peremptorily he should die. To put her by now, this artifice served effectually; a number of waiters attending about the council-chamber, fell foul upon

the poor woman in no very courtly language, reproaching and reviling her, that she did not bring her husband to confession : in short they so teased and plagued her, that they drove her away.

From the time of his commitment to the very moment of his death, he was of a very even and sweet behaviour, being modestly courageous; cheerful without lightness; and devout without ostentation. He made it his particular request, that some minister, or ministers, would be with him every morning and evening to read the prayers of the church, and perform such other offices as in such case as his did belong to that function, which, except one day in the week, was duly observed, and sometimes oftener; for when any clergy came accidentally to visit him, if they did neglect to offer, he commonly requested them to pray with him. He gave little or no entertainment to any hopes of life, as being sensible that it was rather malice, than matter against him; and that a crime may be pardoned, but malice is not to be satisfied without the destruction of its enemy, if he once come in its power. He often expressed a great satisfaction in the cause for which he suffered, saying, That it ministered to him both comfort and courage, and that he doubted not but that God would acquit whom the court had condemned. As to the ordinary (Mr. Smith,) he indeed, in point of conscience, refused to communicate with him, yet mildly and modestly telling him, that he was desirous to give him no trouble, and requested of him that he would not any ways concern himself with him, or about him; at which Mr. Smith fell into such an unseemly intemperate fit of rage, that he reviled the prisoner with bitter words, and very generously damned both him and all the ministers that came at him, to hell: but he took it patiently, and returned not the least word that might seem to sound harshly. As his wife once laid her hands on his fetters, and wept, he intreated her to forbear, saying, He was less than a man that could not bear that; but that her tears were more grievous to him than his fetters: another time, as he was hanging a link on the chair, thereby to ease himself somewhat from the weight of his fetters, and perceiving his wife to look very heavily at it, he said cheerfully to her, My dear, these are my arms, alluding to the arms of their family, being sable, two single shack-bolts, and one double, argent.

When Tucker told him that the dead warrant was come, and that he was in it, he gave him thanks for giving him notice of it, that he might be sure he had now nothing else to do, but to prepare to die; saying further, The Lord's will be done. He received the holy sacrament twice during his imprisonment; but whether it be customary, or that they had particular order, the keepers all (except Walker, who was all along not only civil, but even compassionate towards the prisoner,) the evening and morning before he suffered, became exceeding rugged and harsh, not only to him, but all that

came to him; insomuch that his mother and brother coming that morning to receive the communion with him, could neither beg, nor buy admission; and the poor old woman was forced to depart, without joining in the last act of christian communion with him, or so much as taking her intended last farewell of him.

Other very unbecoming actions towards him I could mention, which I shall forbear, being unwilling to set forth that barbarity which some delight to act. When he was brought down to go to the place of execution, he entered into the sledge, and rode along in it with that calm behaviour, and decent courage, as struck the beholders with remorse and amazement, and made his enemies gnash their teeth with indignation, to see him triumph over their malice even in his death. In his passage all the way, the people rather seemed sorrowful, than inclinable to offer any abuse, except near St. Giles's church, where a rude fellow treated him with very spiteful language, to which he made no return, but lifting up his eyes to heaven, said, O sweet Jesus! How much more hast thou suffered for me, and for mankind? And shall not I learn of thee patiently to bear the undeserved reproaches of this inconsiderate man?

As he was coming to the place of execution, a clergyman got up into the cart to be ready to receive him; at which the ordinary seemed to be much incensed; for he gave him very ill words, bidding him get down, and saying, he ought not to be there, nor should he be suffered; the minister replied little, but stayed still; till (see how one ill nature helps another) major Richardson came up, and with threatenings, and his cane lifted up, forced him to come down, who immediately thereupon applied himself to the sheriffs, (for by this time they were come up) when some ill persons suggested that he was a Papist, to which the prisoner presently answered, Mr. Sheriff, upon the words of a dying man he is not, but a minister of the church of England.

The ordinary made all the opposition he could, but the sheriff granted the prisoner's request, bidding the ordinary hold his peace, and saying it was a thing never denied to a dying man. Being in the cart, and also the prisoner's brother, he used an office which seemed to be collected out of several offices in the common prayer book, with such small alterations as might serve to adapt them to the present occasion; being since asked the reason, he said that he did it both for the authority of the thing, and also to avoid any cavils that might be made at, or any snares that might be laid for, any of his own conceptions. But when he came to mention the creed, he put these particular questions to the prisoner: Do you believe these articles which you are now about to rehearse with me, to contain that faith which hath all along been received by the church of Christ, and particularly by the church of England? And is this the faith

wherein you die, and wherein you hope for salvation? The prisoner making answer, I do so believe, and am now ready to die in that faith, and in that faith hope for salvation. Then said the minister, If so, say after me: Then they repeated the creed, raising their voices somewhat higher than ordinary; after that, the minister asked him several questions concerning his repentance, his charity, his endeavours of restitution for any wrongs by him done, his forgiving of others any wrongs done to him, and the like. And then, at the earnest request of the dying man, he denounced the absolution, then proceeding to divers other prayers, they concluded with that sentence in the office for the burial of the dead; O holy and merciful Saviour, thou most worthy Judge eternal, suffer me not at my last hour for any pains of death to fall from thee. This being over, the minister (whether that he could not endure to see the man die, or that he would not communicate with the ordinary, or for some other reason best known to himself), after he had particularly embraced Mr. Anderton, fervently recommended his soul to God, and taking his last farewell of him, went down out of the cart. The sheriffs civilly commanded a way to be made, and were readily obeyed, he passing through the crowd, not only with ease, but respect. During the time the prisoner was at his private devotions, an order came to remit the quartering of his body, which being by some thought a reprieve, it was handed to him, and having read it, and finding it no more, he returned it, saying, I thank you, Mr. Sheriff, the will of the Lord be done.

Having leave from the sheriffs to speak his mind, if he had any thing to say to the people, he began to speak; but being troublesomely interrupted by the ordinary, and also finding he could not be heard, he desired a speech he had prepared might be taken out of his pocket, and given to the sheriffs, to be by them printed, which is as followeth:

“To my Countrymen,

“Liberty and property hath for some years made an hideous cry in these kingdoms, and nothing more than the rights and privileges of the subject is the pretence of our present deliverers; and doubtless it was for the sake of these that so many of my infatuated and blind countrymen rebelled against their lawful and injured monarch, whilst religion (rebellion's umbrage) was made the covert of the hidden designs of those who have now demonstratively shewn, that they sought nothing less than our ruin: And that these were only pretences to gain their ends, the very blind, although they cannot see, yet must certainly feel it. Under the like pretences do our deliverers still continue to deliver us even from what they please, that they think will but in the least help to effect what they came for: Under the notion of the necessity of a war, they deliver us from our money, and from our traffic and commerce, by which so great a part of the kingdom is sus-

VOL. XII.

tained: Under the notion of carrying it on, they kidnap our young men, the flower of our kingdom, and, directly contrary to law, transport them; and to save their own foreigners, put them in the first onsets of their battles, as the heathens did the christians of old, that their enemies swords might be blunted with killing them, before they came to encounter them: They exhaust all our stores both for sea and land, and carry away all our artillery; and if any man seem but to disapprove of these their proceedings, under the notion of law they murder him: Nay, if they do but so much as suppose him not to be on their side, he must be a traitor, and no matter what the law says, they say he shall die.

“Can any thing be more plain to demonstrate this, than my present case? My supposed crime was printing, and all the witnesses could personally say against me, was, That I was a man against the government, and had called the prince of Orange ‘Hook-nose,’ though I protest I never did: not one of them could say, nor did they offer to say, that I ever printed the books of which they accuse me, or procured them to be printed, or published any of them, or that the materials were mine, or that I hired the room where they were found; but I was an ill man, and that was sufficient: By which it is plain, that they were resolved, right or wrong, to have my life.

“That they designed not to try, but to convict me, is as plain; for they refused positively to allow me counsel to such matters of law, as was never refused to any before; and though I caused several statutes to be read, some to prove that there must be two witnesses at least to the fact; others, that though there had been two, as there was not one, yet positively declared that it was not treason: Nay, the very last session of parliament was it enacted, That the printer of seditious and treasonable books should for the first offence be punished no otherwise than not to follow his trade for three years; and for the second offence, never to follow it more, and such farther punishment as seemed fit to the court, not extending to life or limb. Now though mine (had it been proved) had but been the first, yet you see, contrary, and in direct opposition to the law, they make it high treason: And when the jury could not agree to find me guilty, and came down to ask the court, Whether the finding these things there, and supposing them to be mine, since it could not be proved that I printed these books, or had made any use of them, could affect my life? I say, when the jury asked this question, and the lord chief justice Treby told them positively, No, it did not; yet withal he told them, That that was not their business, their business was to find me guilty of printing: And while they staid, the court frowned upon them to that degree, that the foreman told them, he was not to be frightened; upon which they publicly reviled them, calling them, ill men, ill subjects, and a pack of knaves; and so terrified them into a compliance. That this is true,

4 M

those who were near know too well, although the partial writer of the trials hath most perfidiously published not only an unfair, imperfect, and lame account, but hath also stuffed it with downright untruths and falsehoods, and left out whatsoever made for me; not so much as mentioning the contradictions of the witnesses in what they did swear, their swearing to some things that made for me, and when I took hold of them, they denied them; nor hath he, in the least, told the world of the judge's overruling whatsoever I offered, without giving any other answer than that it should be so, because they would have it so; with many other such things, which the conscientious auditors can testify.*

"And now I pray consider where is this liberty and property? Where the rights and privileges of the subject? Nay, where the very laws themselves? And consequently where is the security of any man? Why, even in the deliverers pockets, where your money is, and where also, without all doubt, if you look not well to yourselves, your estates, ere long, will be likewise. What are the proceedings but arbitrary in a superlative manner, and such as no reign ever produced before? These were they you were heretofore only afraid of, being jealous without just cause; but now you see them actually come upon you. I hope you yourselves will put a stop to them, by laying these proceedings before the parliament, for had it been sitting at this present, these proceedings durst not have been practised; and I pray God to put so speedy an end to them, that as I am the first, so I may be the last that may suffer by them.

"I have hitherto lived a member of the orthodox church of England, as by law established, and I declare I now die in the unity of the same: Therefore, according to its discipline, I hold myself obliged to ask pardon of the whole world, of every particular person whom I have any ways offended; and I do freely and sincerely forgive every one that has offended me, particularly my most false and perjured witnesses, and among them more particularly Robin Stephens; my most unjust and unrighteous judges, and my repenting jury:

* This Trial here spoken of, is the foregoing one, printed in the Sessions Paper of that time.

and I pray God may not lay this their sin of wilful murder to their charge at the general bar, where they shall appear as criminals, and not judges.

"May the Almighty bless, preserve, prosper and restore our sovereign lord king James, to the just possession of his indubitable lawful crowns; strengthen him that he may vanquish and overcome all his enemies here on earth, and crown him with eternal glory hereafter: And that he may never want heirs to inherit his crown, bless, I beseech thee, O God, his royal highness the prince of Wales, and give him such a numerable issue, that there may never want one of his loins to sway the scepters of these kingdoms so long as sun or moon endure. Amen. Amen! WILLIAM ANDERTON."

June 15, 1693.

During the time that the ordinary busied himself, he was observed not to mind him, but to employ himself in his private devotions, and after the delivery of his speech to the sheriffs, his cap pulled over his eyes ready for execution, he prayed thus: "Most great and most merciful Lord God! Do thou look down upon me thy poor unworthy servant in this hour of my great extremity, and have mercy upon me! Sweet Jesus, receive my soul into thine everlasting kingdom, for into thy hands do I commend my spirit, because thou hast redeemed it, O Lord God of truth! Come, Lord Jesus, and receive my precious soul; Father of Mercy, have mercy upon me; O God the Son, Redeemer of the world, have mercy upon me! Lord, comfort and support my soul in these my last minutes! Come, sweet Jesus, come quickly, and save me sweet Jesus; by thy most precious blood, by thy agony and bloody sweat, and by the coming of the Holy Ghost, O Lord, do thou deliver me!" Here the ordinary put in, saying, You must give a sign when you are ready; whereupon the sheriffs charged him not to interrupt him; and as he was proceeding, his sister desired to speak to him, which was granted; who kissing him, and weeping over him, said, Be of good comfort, though there is no pardon for you here, yet there is above. So when they had taken a Christian leave of each other, he returned to his devotions, when after a short pathetical prayer, constantly calling upon his Saviour, the cart drove away.

378. Proceedings before the Lords of the Council, and the Admiralty; in relation to the Trials of JOHN GOLDING, THOMAS JONES, JOHN RYAN, DARBY COLLINS, RICHARD SILVERS, PATRICK QUIDLEY, JOHN SLAUGHTER, and CONSTANTINE DE HARTLEY, as Pirates, though acting under King James the Second's Commission: 5 WILLIAM & MARY, A. D. 1693.

SINCE the commencement of king William's war, several privateers having been taken and detained in prison, acting by king James's commission, it was resolved, about July, 1692, by the Lords of the Privy Council, That they should be tried as pirates, having no commissions from kings or sovereign powers whatsoever; and accordingly, about November, 1692, the Lords of the Admiralty ordered Dr. Oldish to proceed against them as pirates; but he declined the doing thereof, and gave his opinion in writing under his hand, That they were no pirates, nor ought to be prosecuted as such: Upon which, September, 1693, Dr. Oldish was summoned before the cabinet council, with sir Thomas Pinfold, Dr. Newton, Dr. Walker, Dr. Littleton, and Dr. Tindall.

The Lords of the Council present, with the secretaries, the earl of Nottingham and sir John Trenchard, were the earls of Devonshire and Pembroke, and the Lords of the Admiralty.

Mr. Secretary Trenchard demanded the reason of his opinion.

Dr. Oldish. Pirates are common enemies to all mankind, having no legal authority for what they do; but they shew a commission signed J. R. dated at the court of St. Germaine's, together with articles and instructions annexed, in the same form as privateers have, giving caution and security to bring prizes, and judgment into the Court of Admiralty, before Thomas Shadford, at Brest, or elsewhere: this does no way agree with piracy, or the character of a pirate, who is a robber, and has thereby lost his right in the law of nations.

Sec. Trenchard. But king James has lost his sovereignty, in that he has parted with his crown, and consequently with the power of granting such commissions.

Dr. Oldish. A king may be deposed of his crown, but cannot lose his right. So says Grotius, '*Jus regis penes ipsius manet, ut cunque possessionem amiserit.*' A king, therefore, in case he be deposed of his kingdom by the law, he has a right to war, and if so, he has all the ways and consequences of war, amongst the rest, pignurations and reprisals, which is a power of granting letters of mart and reprisal.

Sec. Trenchard. This may be law, in case where the king is deposed; but what if the king abdicates?

Dr. Oldish. If he did really abdicate, as did

the emperor Charles the fifth, or the queen of Sweden, then he is no other than a private person, and cannot legally grant any commission. But whether a privateer, acting by commission granted him *de facto* by king James, not knowing that he had abdicated, whether such an error will excuse *à pœna delicti*? For that a reputable power is equivalent to a real one in such a case.

Sec. Trenchard. To clear this, doctor, we must examine the circumstances of the case, and see if they be such as may occasion and induce a common error, whereby many may be deceived, as well as privateers.

Dr. Oldish. It is notorious to us, and all the world, that king James was once a lawful king, and acknowledged by us, and all the world, to be so; that when his army deserted him, he fled to his ally in France for aid; then he went into Ireland to recover his kingdoms, as his declaration sets forth; there he grants commissions: those who fought under those commissions, and were taken, were not used as thieves and robbers, but as prisoners of war; whereby his claim seemed to be allowed by his very enemies; and those persons who acted under him in Ireland were treated as enemies, not rogues, though they acted under no king but king James, and by his command; that upon their return to France, they repaired to king James, their king, and thought him as well empowered to grant commissions by sea as land, and upon receipt of commissions from him, came out '*animo hostili*,' as privateers, '*non animo furandi*,' as pirates: That a colourable authority remaining in king James, will excuse those who acted under him from being pirates, since the abdication was never published, nor so much as heard of in France; and since in piracy, which deserves '*ultimum supplicium*,' if proved, all favourable allowance ought to be made, and a general acknowledgment of a false authority in another country (where the commissions were taken) will free them from a felonious intent in taking them, and consequently from piracy; for so it is, that king James is owned and reputed a king in France; and therefore in this case it is undoubted law, '*Communis error facit jus.*'

Lord Devon. What if Tourville should grant such commissions to any Englishman, were they not pirates who acted under him?

Dr. Oldish. No, even the power of grant-

ing such commissions being excepted in his patent, yet by common intendment, as admiral, he can grant such commissions; and as it is not to be presumed, that private men should look into his patent, so neither ought they to suffer for not having seen it; it is sufficient for them, that he is reputed to have such power.

Lord *Devon*. What if monsieur Pomponne, or any other minister of state, should grant such commissions?

Dr. *Oldish*. Why then it would not be good; for by common presumption, a secretary of state would not grant such commissions, that power being proper only to the admiral.

Sec. *Trenchard*, and Lord *Faulkland*, in great heat. I—pray, doctor, let us deal more closely with you, for your reasons are such as amount to high treason. Pray, what do you think of the Abdication?

Dr. *Oldish*. That is an odious, ensnaring question; however it may be, I think of the Abdication as you do; for since it is voted, it binds at least in England: but those gentlemen were in a foreign country, and knew nothing of it; and though king James be not king here, yet the colour of authority remaining, and common reputation of him as king there, excuses them, as I said before.

Sec. *Trenchard*. What say you of the pirates under Anthony, king of Portugal?

Dr. *Oldish*. As to the case of the Frenchmen, under Anthony, king of Portugal, the book says, 'Tractati sunt non quasi justis hostes, sed quasi pirati qui sub Antonio militant;' and the difference of this case appears in the reason of it: For there the Spaniards never owned Anthony as king; here it is quite otherwise; for king James was really and truly a king, owned by us, and all the world.*

* Dr. Tindall, in his *Essay concerning the Law of Nations*, pp. 25, 26, 27, 28, 29, and 30, says: "The occasion of sending for the Civilians, after some of them that were consulted had given their opinions in writing, was, as the Lords told sir Thomas Pinfold, and Dr. Oldish, (who had declared that they were not pirates, without offering to shew the least reason why they were of that mind) to hear what reason they had to offer for their opinion.

"Then sir Thomas Pinfold said, It was impossible they should be pirates, for a pirate was 'hostis humani generis,' but they were not enemies to all mankind, therefore they could not be pirates. Upon which all smiled, and one of the Lords asked him, Whether there ever was any such thing as a pirate, if none could be pirate but he that was actually in war with all mankind? To which he did not reply, but only repeated what he had said before. 'Hostis humani generis' is neither a definition, or as much as a description of a pirate, but a rhetorical invective to shew the odiousness of that crime. As a man, who, though he receives protection from a government, and has sworn to be true to it, yet acts against it as much as he dares, may be said to be an enemy

Sir Thomas Pinfold being asked what he had to say, declared himself of the same opinion.

Dr. *Newton*, and Dr. *Walker*, did not de-

to all governments, because he destroyeth, as far as in him lieth, all government, and all order, by breaking all those ties and bonds that unite people in a civil society under any government: So a man that breaks the common rules of honesty and justice, which are essential to the well-being of mankind, by robbing but one nation, may justly be termed 'hostis humani generis;' and that nation has the same right to punish him, as if he had actually robbed all nations.

"Doctor Oldish said, That the late king, being once a king, had, by the laws of nations, a right to grant commissions; and that though he had lost his kingdoms, he still retained a right to the privileges that belong to sovereign princes. It was asked him by one of the Lords, Whether he could produce an author of any credit, that did affirm, that he that had no kingdom, or right to any, could grant commissions, or had a right to any of those privileges, that belong to sovereign princes? And that no king would suffer those privileges to be paid to Christina, when she ceased to be queen of Swedeland; and that it was the judgment of all the lawyers that ever mentioned that point, that she had no right to them; and he did hope, that those that had sworn to their present majesties, did not believe the late king had still a right: and that that point was already determined, and would not be suffered to be debated there. To which he answered, That king James was allowed very lately the rights of a king, and that those that acted by his commission in Ireland were treated as enemies; and people that followed his fortune, might still suppose he had a right, which was enough to excuse them from being guilty of piracy.

"One of the Lords then demanded of him, If any of their majesties' subjects, by virtue of a commission from the late king, should by force seize the goods of their fellow-subjects by land, whether that would excuse them from being guilty at least of robbery? if it would not from robbery, why should it more excuse them from piracy? To which he made no reply. Then the Lords asked sir Thomas Pinfold and him, Whether it were not treason in their majesties' subjects, to accept a commission from the late king, to act in a hostile manner against their own nation? Which they both owned it was (and sir Thomas Pinfold has since, as I am informed, given it under his hand, that they are traitors). The Lords further asked them, If the seizing the ships and goods of their majesties' subjects were treason, why they would not allow it to be piracy? because piracy was nothing else but seizing the ships and goods by no commission; or what was all one, by a void or null one; and said, That there could be no commission to commit treason, but what must be so: To which they had nothing to reply. Only Dr. Oldish pre-

clare their opinions, but desired time to consider of it. Dr. Newton said, It was against his conscience to have a hand in blood.

tended to quote a precedent, which he said came up to the present case, about Antonio, king of Portugal, who (as he said) after he had lost his kingdom, gave commissions to privateers to seize upon all Spanish vessels, whom, as the Spaniards met with, they hanged as pirates; (so far his precedent is against him :) but an author, without naming him, was of opinion, as he said, That if Antonio had ever been a rightful king, that then the Spaniards ought not to have treated those that acted by his commission as pirates. This was all that was said by the doctor in behalf of the late king's privateers; upon which I must beg leave to make a few reflections. As to those privileges which were allowed the late king in Ireland, they were not allowed him upon the account of any right, nor was it an owning that he had any right to that kingdom, but barely as he was in possession; for then he had '*republicam, curiam,*' &c. and consequently a right to be treated as an enemy; and not only he, but whoever had been in possession, would have had a right to have been used after the same manner, and is no more than what is practised in all civil wars, where there are just forces on either side. These privileges being allowed him when he was a public person, and in possession of a kingdom, could be no just reason to induce any to imagine that they would be permitted him when he was reduced to a private condition: much less is it such a presumption as is sufficient to excuse them, who acted by his commission, from suffering as pirates. The very taking a commission from him, after he was reduced to a private condition, to act against their own nation, was a demonstration that the government was no longer in his, but other hands, who could not reasonably be presumed would allow that he had still any right, or that they that acted by his commission should be dealt with as if he still had a right; but that they should be used as if they acted by no commission, or what is all one, a null or invalid one. Their pretending to believe he has still a right, is no more an excuse in the case of piracy, than of treason, which every traitor may pretend to.

"As to the story of Antonio, the doctor is (to suppose no worse) abominably mistaken in the very foundation; for they that suffered by the Spaniards as pirates, were French, who had not their commissions from Antonio, but from their own king, as Albericus Gentilis, who mentions this story, lib. 1, cap. 4, saith, '*At ipsa historia vincat eas non fuisse piratas, per literas quas regis sui ostendebant, cui regi serviebant, non Antonio, et si maxime pro Antonio, quod illos non tangebant.*' And Conestaggius, who is the historian he refers to, and who has given an excellent account of that war, saith, It was the royal navy of France (which is very improbable did act by any authority but that of

Dr. Littleton said, That king James now was as a private person; we had no war with him, nor he with us; or if he designed to have

the French king's) set out, as he words it, '*regis sub auspiciis,*' with which the Spanish fleet engaged, and had the good fortune, after a long and bloody fight, to rout it, and took above five hundred prisoners, of which almost the fifth part were persons of quality, whom the Spanish admiral was resolved to sacrifice as pirates, because the French king, without declaring war, had sent them to the assistance of Antonio: Against which proceedings the officers of the Spanish fleet murmured, and represented to their admiral, that they were not pirates, because they had the French king's commission; but that they chiefly insisted on, was the ill consequence it would be to themselves, who, if they fell into the hands of the French, must expect the same usage. As to the French king's assisting Antonio without declaring war, they supposed, that before the sea fight, the two crowns might be said to be in a state of war, by reason of frequent engagements they had in the Low Countries. This is the account Conestaggius gives of it, which, how little it is to the purpose the doctor quoted it for, is so visible, that there is no need of any words to shew it. But granting (as the doctor supposeth) that Antonio never had any right, or at least the Spaniards would never allow he had any; yet it is evident from the historian, that they allowed him, during possession, the same privileges as the late king had during the war in Ireland: and if the Spaniards, by the law of nations, after Antonio was driven from his kingdom, might treat those that acted by his commission as pirates, why may not the English deal after the same manner with those that act by the late king's commission, since they look on him to be in the same condition as the Spaniards did on Antonio, without a kingdom, or right to one? What difference can that make, that one had never a right, and the other, though he had once a right, has lost it?

"These two Civilians, I believe, are the only persons pretending to be lawyers, that are of opinion, That a king without a kingdom, or right to one, has, by the law of nations, a right to grant commissions to privateers, especially if they are subjects (as they have acknowledged it) to that king, against whom they, by their commissions, are to act. Upon what account can such a person claim these privileges? or for what reason should mankind pay them to him, more than to other private persons? are these privileges like the charms, or indelible characters, the Papists say, are inseparable from the persons of their priests? which, whatever it be in ecclesiasticals, is no small bigotry and fanaticism in civil affairs. And it is the height of folly, madness, and superstition, to believe that the people, who have entrusted some one amongst them with power for no other end but for protecting them, can, upon no account whatever, resume it."

any, *Ærarium non habet*, he is not in a capacity of making war, he can neither send nor receive ambassadors; and those who adhere to him, are not enemies, but rogues, and consequently those persons are not privateers, but pirates.

Dr. Tindall was of the same opinion with Dr. Littleton.

Dr. Oldish hereupon was removed from his place of king's advocate, and Dr. Littleton succeeded him, who tried the persons, and condemned them. After their condemnation, they presented the following petition to the House of Peers, viz.

To the Right Hon. the Lords Spiritual and Temporal in Parliament assembled: The humble PETITION of John Golding, Thos. Jones, John Ryan, Darby Collins, Rich. Shivers, Patrick Quidley, John Slaughter, and Constantine De Hartley, now Prisoners in the Marshalsea, lately tried and condemned as Pirates and Traitors:

Sheweth; That whereas your petitioners have been lately tried and condemned as for piracy and treason, for acting under commissions from king James, and the king of France: whereas, as your petitioners humbly conceive, and are advised, they ought not, by the laws of nations, or the laws of this land, to have been condemned as for either; but to have been used as enemies and prisoners of war.

And whereas there is a reserve in the statute of 25 Ed. 3, of treason, That where any Cases in times to come, shall happen before any justice, which may be supposed treason, but are not therein specified, that such justice shall tarry, without going to judgment, till the cause be shewed and declared before the king and his parliament.

And whereas your petitioners, at their trials, did humbly insist, and often request the judges that tried them, that their cases might be specially found by the juries, and that they might have counsel assigned to argue them; and particularly proposed the aforesaid reservation in the said statute for treason, to their serious considerations; yet nothing of all this could be obtained from your petitioners judges, or prevail with them to suspend the condemning your petitioners, so much as for one hour: although no such, or such like cases as any of your petitioners are, (considered with all their circumstances) or have ever, as your petitioners are advised, been adjudged treason, as will sufficiently appear to your lordships, (as your petitioners believe) if your lordships will be pleased to take into your serious considerations your petitioners Case hereunto annexed, with the reasons added thereunto. Your petitioners therefore humbly appeal to your lordships justice in the premises, beseeching your lordships seriously to read and consider your petitioners said cases, and extend your justice and goodness to your petitioners, for their relief, as to your lordships great wisdoms shall seem meet,

and to intercede for your petitioners.

And your petitioners shall ever pray, &c.

Our Cases, with some reasons and considerations, humbly offered to your lordships now assembled in parliament, why we John Golding, &c. lately condemned as pirates and traitors, ought not, according to the law of nations, so to have been.

Our Case is this: we say (as was also said at our trial,) that we are all natives of Ireland, and were in the actual service of king James, and all along acted under his commissions, from the time that the prince of Orange invaded England, to the time of the surrender of Limerick; and the articles made upon that capitulation, signed by lieutenant-general Ginkle, which were soon after published by authority: that we, with several thousands more, pursuant thereunto, were conveyed as enemies into France, with arms, horses, brass guns, mortar-pieces, and ammunition. That being thus conveyed into France, we were continued still to act and serve under king James's commissions, as our king; and he all along, both whilst we were in Ireland, and after we were thus conveyed into France, continued to command or commission us as his subjects. And we the said Richard Shivers, &c. who are condemned as pirates, say, (as we also said at our trial) that the ship and goods, for the taking of which we were charged as for piracy, we took as privateers, by virtue of a commission and instructions from king James, signed and dated from his court at St. Germain's in France; where he exercises a regal authority. And we the said John Golding and Thomas Jones say, that we accepted the king of France's commission, and acted under it, (for which we were condemned as traitors) by the permission and consent of king James. And we all say (as we likewise said at our trials) that we never owned or submitted to the authority of this government in any respect whatsoever, or ever received any protection from it, or from king William, but all along served as subjects to king James, and enemies to king William: and were taken as in actual hostility, acting under the aforesaid commission and instruction. We also say, that there are many thousands in Flanders, England, Scotland, and Ireland, who have all along, and still do act promiscuously under king James and the king of France's commissions; and in either case, as often as any of them have been taken prisoners, they have been treated as enemies, and prisoners of war.

And our case being thus, we humbly conceive, that neither by the law of nations, or by the law of this land, we ought to be treated otherwise than as enemies and prisoners of war.

And first, we humbly beg leave to offer, and say, that king James was at the time of the invasion of England, by the prince of Orange, actually and rightfully king of these realms; and that by the late invasion of England, king James and the prince of Orange became actual

enemies to each other; and that the soldiers taken in arms by either party, ought, and were looked on as enemies and prisoners of war.

That as long as any war continue, the prisoners taken on either side are prisoners of war.

That king James withdrawing from England, did not put an end to this war between him and the prince of Orange; and that the war in Ireland was a continuation of that war.

That it is lawful for the subjects of these kingdoms, to stand by, and assist their lawful king, as long at least as they please, in any war or design raised against him, or his government; and are not compellable to quit their service to such lawful king, so long as he will continue to act as king, and command them as subjects.

That in case of any invasion, and dispossession ensuing thereupon, the subjects of these realms are not bound to abide within these realms, and submit and become subjects to the dispossessioner, at the peril of treason; but may lawfully still attend their king's fortune and service, if they chuse so to do.

That the possession of these kingdoms, obtained through any invasion, does not either alter the possession of, or right to the subjects allegiance; for that allegiance is a natural relation, and follows the natural person of the king, and is not incident, or appurtenant to a place, like a villein to a manour; for this, be pleased to see the great case of the union of Scotland, in Moor's Reports, p. 790, solemnly considered, and adjudged in parliament.

That any dispossessioner of any lawful king of these realms, cannot legally pretend to the allegiance of such subjects of such lawful king, as never were within his power, or subjection, or ever recognized, or submitted to him, or had any protection from him, because such can be no debtors to him, and allegiance is a debt, and therefore such cannot stand accountable to any such dispossessioner as for treason, till he is some way or other possessed of their allegiance.

That the allegiance of any subjects of this kingdom, cannot be transferred to the dispossessioner of a lawful king, by the act of others, without some consent, or act of their own.

That a king may continue to wage war after he is dispossessed of his kingdom, and be reputed still an enemy by the law of nations, and consequently all those of his subjects that continue still with him, without transferring their allegiance to the possessor, be reputed and treated as enemies; for it would be absurd to say, that the king may continue in war, where the subjects cannot.

That king James having no *Ærarium*, or treasury, (in case it be so) as has been alledged against the validity of his commission, is no more sense, than it would be to say, that no prince by the law of nations can continue war, but at his own charge.

That the war between king William and king James continued on, after king James and his forces left Ireland, and that the articles upon the surrender of Limerick, admit it

so to do, if the permitting so many thousand men with arms, horses, guns, and ammunition to go into France to king James, to serve as soldiers, commissioned by him, may be any proof of such admission.

That the said article being signed by lieutenant-general Ginkle, Limerick and other places having been surrendered upon the faith of those articles, all concerned in them, ought by the law of nations to have the full benefit of them; and that, although they had never afterwards been confirmed.

That king James is still actually in war, and in confederacy with the king of France; that many thousand English, Scotch and Irish still act under commission from king James, in conjunction with the French forces: that they have hitherto been discharged and exchanged by the confederates, (as prisoners of war) though taken fighting against the English that act under king William's commission; and if so, why are king James's commissions annul, and nothing at sea?

That king James and the king of France being confederated together in war against England, it matters not in the judgment of the law of nations, under which of the confederates commission the subjects of either act; whether under king James or the king of France's; but the enemy without distinction, if either subject act under either commission, ought by the law of nations to treat them as enemies and prisoners of war.

That where two kings join in war against one another, after one of them has lost part of his dominions, (as king James had, when the king of France sent him forces into Ireland) and soon after he became wholly dispossessed, would it not be absurd, for any one to say upon this case, that it was absurd by the law of nations for the one king to assist or join with the other, after that he had lost part of his dominions? Or if he does, that yet notwithstanding the war is wholly at an end as to the loser, and he becomes a private person, though never so many of his subjects follow him in warlike manner by capitulation from the enemy, or that these subjects are disabled by the law of nations, to accept any commission from him, (or his confederate king by his consent) or serve him any more as their king: or, if they do, that this will not excuse them from being pirates and traitors to the dispossessioner.

That the law of nations, to the judgment of which our case only belongs, is the great and imperial law of right and equity that judges of the rights of kings and nations, with respect to each other, and of the rights of war, and of the rights of peace; and all nations with respect to this law are considered as one great corporation, and each kingdom or nation but as a single member or part of this corporation. And therefore this law, or any rule of right, or notion of it, cannot be altered, concluded or estopped by any votes, ordinances or statutes of any particular nation or kingdom.

That every lawful established king, in the no-

tion of this law, has a right to hold his kingdom, during his life; and that in case it be any such king's misfortune to be dispossessed through any war or invasion, that he has 'Jus Belli' 'pro Regni Recuperatione,' and a right to the assistance of any other prince, who shall think fit to join with him for the recovery of his kingdom, as being as much his legal remedy, as for any private person for the disseizing his freehold by the particular laws of any particular kingdom.

That it is also a notion and rule of this law, that no lawful king can lose the name and title of king, unless he resign or abdicate his kingdom; and that every abdication or resignation ought to be the voluntary and intentional act of such king so to do, or else that it is no abdication or resignation. That every such abdication or resignation by this law must appear otherwise to the judges of this law, than only by a vote or statute, made only by the prince and persons in possession of the kingdom of such supposed abdicated king; or otherwise these judges cannot, by the law of nations, admit it to be in any case, wherein the writ or issues of the same case turns upon such abdication: especially, if such king continued to act as a king, and to grant commissions as such, &c. For if once such a vote or statute should be admitted as evidence in our law, (would these judges say) no prince, once out of possession, however he came so to be, could retain any right to his kingdom: or the very name of a prince, unless his enemy would please to let him? For it would be no more than for the enemy to vote that the prince has resigned or abdicated, and there would be an end of the prince and his right; as to be sure no prevailing enemy would omit to do, if such, or any such vote, or law made among themselves, would by the law of nations utterly

conclude, and unking the dispossessed prince, and dissolve all relation between him and his subjects, as consequently it must do; and that therefore, however the party making such vote, and receiving protection from the prince in possession, may be estopped and bound by it by their own acts and consents, yet in the eye of the law of nations, (which alters not) he continues in all the circumstances and rights of a dispossessed prince, until he shall appear to have resigned or abdicated, according to the law of nations.

Lastly, We most humbly propose, and appeal to your lordships' considerations, whether the articles of Limerick, which were produced at our trial, and are ready to produce to your lordships, and the very reputed power (in case he had no other) king James has hitherto had, and used, of granting commissions, and all that have hitherto acted under his commission having been used and treated as soldiers and seamen acting under real and valid commissions, be not sufficient to excuse us (who have never been within this kingdom since the beginning of the war, until we were brought prisoners from the condemnation of pirates): and whether acting under the king of France's commission, being in amity and league with king James, and by his consent, can be in us treason against king William, who never, in any respect, received his protection, but adhered all along to king James, as to our king, and fought against king William, as king James's enemy.

These considerations are humbly submitted to your lordships, being, as we conceive, of the greatest consequence to all the subjects of England, as the case may sometimes happen.

However, some of them, if not all, were executed.

379. Proceedings in Parliament against THOMAS LORD CONINGSBY and Sir CHARLES PORTER, on an Impeachment of High Treason: 5 WILLIAM & MARY, A. D. 1693.

HOUSE OF COMMONS.

December 16, 1693.

THE Earl of Bellamont* presented to the House Articles of Impeachment of High Treason, and other Crimes and Misdemeanors, against Thomas lord Coningsby, one of the late Lords Justices of Ireland; which were delivered in, and read at the clerk's table, as followeth: viz.

* An Irish peer, appointed, in 1695, governor of New York, being thought by the king a man of resolution, and integrity; and with these qualities, more likely than any other to put a stop to piracy, with which the American colonies, at that time, abounded.

1. "That he the said lord Coningsby hath traitorously abused the power and authority of his government, and exercised the same tyrannically, discouraging and terrifying the Militia, by framing and imposing on them a new, arbitrary, and illegal oath, notwithstanding that his majesty left instructions, when he came from Ireland, for arraying the militia; which instructions did, among other things, direct, That the oaths, established by act of parliament in England, should be administered to them; but the said lord Coningsby, in the oath he imposed, left out that part which requires them to renounce the jurisdiction of the Pope, and all other foreign powers, purposely to leave room for Papists to come into the militia; and further in his instructions, or-

dered all governors of counties to subject the militia to martial law, contrary to the known laws of that kingdom, and his majesty's said instructions; there being no militia established in that kingdom by law, but has been hitherto a voluntary service.

2. "That the said lord Coningsby intending to bring their majesties good Protestant subjects of Ireland into a dislike of their majesties government, did, traiterously, arbitrarily, and against the known laws of the said realm, exact and force free quarter for the army: and did also, by force of arms, levy money on the Protestant subjects; rejecting the several proposals made to them, by the most considerable gentry of some countries, for the more regular subsisting a greater number of soldiers than were free-quartered upon them; which discouraged other counties from making the same offers; so that the country thereby became entirely ruined.

3. "That the said lord Coningsby for his own private gain and advantage, did traitorously cause great scarcity of provisions in the army before Limerick, by obliging the sutlers to take licences from him at excessive rates, and by laying taxes on all such beer, and other provisions, as went to the camp; whereby, all or most of the sutlers being forced to forsake the service of the camp, provisions of all sorts became so very scarce and dear, that great numbers of the soldiers perished for want.

4. "That the said lord Coningsby assuming to himself an arbitrary and tyrannical power over the lives, as well as the properties, of their majesties subjects of Ireland, above and against all law, did, in council, traiterously, and by word of mouth, order one Gafney to be hanged without trial, the courts of justice being then open, and who was, at that time, an evidence against one Sweetman, for the barbarous murder of some of colonel Foulke's soldiers: but the said Sweetman giving all his real estate, to the value of 200*l.* per annum, to Mr. Culliford, besides the sum of 500*l.* to Mr. Fielding, his the said lord Coningsby's secretary, for being his bail, but never prosecuted for the said horrid murder: and the said Gafney was immediately executed, according to the said verbal order.

5. "That the said lord Coningsby during his government of Ireland, did, by himself, or his agent, traitorously settle and maintain a correspondence and carry on a trade, with the subjects of the French king, their majesties declared enemy.

6. "That the said lord Coningsby, betraying and abusing the great trust reposed in him; and the better to enrich himself, and to enable him to go through with his traiterous designs, did embezzle vast quantities of their majesties stores, and forfeited estates both real and personal; whereby the reduction of that kingdom became more difficult, and the war more burdensome upon England, and the army greatly discouraged for want of their pay; which by due application of the said embezzled stores and estates, might have been remedied.

VOL. XII.

7. "That the said lord Coningsby, further traiterously abusing his said great trust, and betraying their majesties honour and interest, did, during his whole government, openly favour and support the Papists in their robberies, and other outrages, committed upon the Protestants; refusing to allow them liberty of taking their legal remedies against the Papists.

"And that he, the said lord Coningsby, was one of the said lords justices, during the time that all and every the crimes and offences, before set forth, were done and committed."

The earl of Bellamont also presented to the House similar Articles of Impeachment against sir Charles Porter, knight, another of the late Lords Justices of Ireland.

Lord Coningsby. This is a great charge: 'traiterously and violently' are the best words that can be found in it. This matter was before the house last session, and the house seemed satisfied. When I found that my service was turned into faults, myself, with sir Charles Porter, desired a pardon; as those in my station have done before. The king granted it. I was in the country when this lord put in a caveat, because the matter was depending in parliament. But I desired no pardon, and would have had it stopped. Lord Bellamont gave no reason for the caveat, why the pardon should be stopped. The king has sent into Ireland to have an account of this charge, which was the same in effect at the council, as this here; and it is now come to a farther accusation. Most of these things called 'traiterous,' most Protestants will tell you, preserved Ireland. (And so he proceeded to several things for his defence, &c.) If any thing requires farther explanation from me, I desire a copy of the charge.

Earl of Bellamont. This is a business of consequence, and I cannot trace this lord in what he has said. But I have good evidence to prove the Articles. I am a stranger to methods, and I know not whether I am right in forms. I have a charge against sir Charles Porter,* all the same but to the charge of stores, when I have your order for certain gentlemen to come out of Ireland. And so went on in aggravating the charge in several particulars, and exhibited the same articles *mutatis mutandis* against sir Charles Porter.

Sir Charles Porter. This is a great attempt, to defame men, and bring their lives and reputations in question. I have done all for the honour of the king, and the good of Ireland. (And so went on to justify himself as to the Articles.)

Lord Bellamont replied upon him in several particulars, and desired time for his evidence to come over.

Mr. Palmes. I stand up to method. This is a heavy charge against these persons. The question is, 'Whether you will refer the matter to a committee, or call in the evidence?'

* Lord Chancellor of Ireland, and another of the Lords Justices.

Sir *Edw. Seymour*. I remember proceedings in things of this nature. You have heard the charge. The persons accused ought to have a copy of the charge, and time to bring in their answer; as formerly has been done. I speak experimentally. I have had a charge against me, and it was not proceeded in.* When they give in their answer, the next step is for your proceeding.

Sir *John Lowther*. This being an Impeachment against your members, you will do justice on all sides. They think themselves innocent, and, no doubt, will deny it. They may have a copy, and give their answer.

Sir *Edw. Seymour*. I have told you what related to myself. The prosecutors against me never pretended to prove the accusation; I hope that will not be drawn into precedent. This proceeding is different from other courts. (Replying upon sir Francis Winnington) He has a happy remembrance in some things, and forgets others. He said, 'Let the witnesses come, and then we may well judge what it amounts to.' A noble lord (Orrery) was once impeached here; he put in his answer; the house thought it frivolous, and put it off to be proceeded at law.† Then the evidence was concealed, but now it is at the door, and you have the answer of the party accused.

Mr. *Finch*. That this matter may come to issue, you are in a right method. You have had the information, and the answer; and if you are not satisfied, then you have another method to proceed.

Sir *Christ. Musgrave*. I doubt you cannot deny copies of the articles to the persons accused, and reasonable time to make their defence. Lord Orrery did only answer in his place. I would gladly know, if such a misfortune should befall a man, whether you would debar him making use of his paper? But, as for calling witnesses, I would not admit that; for perhaps the answers of the persons may occasion no farther proceedings against them. I would order them a copy, and not straiten them in time.

Sir *Tho. Littleton*. I hope this high charge against these persons is not true; but it is for their honour to be publicly justified. It is impossible to be proved, without evidence, by general answer.

Resolved, "That this House will, on the 22nd instant, hear witnesses, at the bar of the house, to the said several Articles."

December 22.

The House proceeded according to order, to hear Witnesses to the Articles against lord Coningsby and sir Charles Porter. And the 1st, 2nd, and 5th Articles were severally read, and several witnesses called in and examined at the bar to each of those Articles. And several Letters and Copies of Letters and other Papers, delivered in by the earl of Bellamont and the

witnesses, were also read, touching the matter of those Articles.

On the 20th of January, 1694, lord Coningsby and sir Charles Porter were severally heard in their places; and being withdrawn, the House resolved to proceed in the consideration of the said Articles, article by article. And on the 29th, the House Resolved, on the 1st Article, "That the imposing the oath mentioned in this Article was illegal: but that, considering the state of affairs in Ireland at that time, this House doth not think fit to ground an Impeachment upon it." In the 2nd and 3rd Articles no ground of Impeachment appeared. On the 4th, Resolved, "That the Order for the execution of Gafney, without trial, was arbitrary and illegal; but, for the same reason as before, they declined to impeach lord Coningsby upon it." On the 5th, 6th, and 7th, no ground of Impeachment appeared. And lord Coningsby and sir Charles Porter were ordered to take their places in the House.

In this same year, 1694, occurred the Trials for the LANCASHIRE PLOT. I have not been able to obtain any full report of them, but have been favoured by Mr. Dealtry with the following minutes respecting the proceedings.

"Oct. 7. 6 W & M. A session of Oyer and Terminer was holden at Manchester, before sir Giles Eyre, knt. a justice of the court of King and Queen's Bench; sir John Turton, knt., and sir John Powell, knt. barons of the exchequer; and sir Samuel Eyre, knt. another justice of the king and queen's bench, under a special commission to inquire of treasons, &c.

"At which Session, an indictment was found against sir Rowland Stanley, bart.; sir Thomas Clifton, bart; William Dicconson, esq.; Philip Langton, esq.; and William Blundell, gent. for High Treason.

"Oct. 17. They were tried before the same justices, and John Hunt [qu. Lunt] was produced as a witness for the crown.

"Hilary Term, 6 W. 3. Sir Edward Ward, knt. his majesty's attorney general, filed an information against the said John Hunt, for perjury, charged to have been committed upon that trial.

"Like information against John Wombell.

"Like information against George Wilson.

"Michaelmas, 7 W. 3. Def'ts having been convicted at the assizes, obtained rules for new trials. And

"It was ordered that the rolls should be

* See vol. 8, p. 127. † See vol. 6, p. 914.

amended, by stating that the defendants came and pleaded in their proper persons, instead of stating that they appeared by attorney."

The following is Tindal's Account of these transactions :

"The Popish Lancashire gentlemen, instead of acknowledging the lenity of the present government, endeavoured to represent the legal prosecution of some of their party as a state-trick, and the contrivance of some courtiers to enrich themselves by the ruin of others; and submitted the whole matter to the examination of the House of Commons. It will be proper therefore to premise a brief account of their design to subvert the government, and of the proceedings against them, in order that a right notion may be formed of the grounds of the clamour against those proceedings.

"On the 15th of June, 1694, Lunt, an Irishman, made his discovery, and deposed before sir John Trenchard, secretary of state: 'That he had followed the late king James into France, and thence into Ireland: that from Ireland he was sent into England, with commissions from that king to certain gentlemen in Lancashire, Cheshire, &c. to raise war against king William and queen Mary: that he and George Wilson, his guide, delivered those commissions to whom they were directed; whose names he mentioned in his narrative. That, at the instance and proper costs of those gentlemen, to whom he had delivered commissions, he bought arms, and listed and subsisted many for the service of the late king James, in order to an invasion and insurrection in that county. That he was twice sent by those gentlemen into France to the late king, to signify their readiness, and receive his further commands; and that, when he was at London, besides his employment of buying arms, and listing soldiers, he helped some Jacobites over into France, and secured others, who came from thence, who, all of them, told him, that generally sir John Friend furnished money for those expeditions, and paid subsistence money to them as soldiers.' This evidence was confirmed by the testimony of George Wilson, who guided and assisted Lunt in the delivery of king James's commissions, and by the depositions and affidavits of several persons, (some at a great distance from, and utter strangers to one another) all agreeing in the most material circumstances of the Lancashire conspiracy.

"The government being fully informed of the plot, warrants were issued out to seize the conspirators; and though, for the greater secrecy, the names of the offenders were not put into the warrant at the secretary's office by those who drew the warrants, but were afterwards put in by the secretaries themselves, yet, by some treacherous correspondence, the Lancashire gentlemen had notice given them of all proceedings at London. Upon this they

burnt their commissions, buried their arms and other warlike equipage, under ground, and most of them fled from their habitations. However, through the extraordinary care and diligence of captain Baker, and others employed in that service, some of the plotters were apprehended, and arms enough found to convince the world, that there was a treasonable design on foot against the government. There was likewise found in Mr. Standish's closet, at the search made at Standish Hall, on the 16th of July, 1694, the draught of a Remonstrance or Declaration, to be printed and published at king James's landing; which, according to Mr. Crosby's papers, and Mr. Robinson's depositions, was to be attempted very speedily.

"As many of the persons accused, as could be apprehended, being brought up to London, and examined, were, some of them, committed to the Tower, and others to Newgate, where they continued about a month. During this time, their friends and solicitors exerted all their skill and diligence to take off the king's evidence, both by offering them large sums of money, as was attested by Mr. Baker, Mrs. Hearst, Mr. Clayton, Mr. Brown, and Mrs. Elliot; and that failing, by finding out persons, who would represent the king's witnesses under heinous characters, that the jury might give no credit to their depositions. Many persons were practised upon, some of whom refused so base an action; but others, through great importunities and promises of large rewards, were prevailed with to defame the king's evidences, both at Manchester, and in the Parliament House. But that which raised the great clamour against the discovery of the plot, was the gaining one Taffe, alias Thomas O'Mullen, an Irishman, to the other side; which happened in this manner.

"In Dec. 1693, Lunt came from France, and being, as he afterwards pretended, troubled in conscience, for having engaged in the barbarous design of assassinating the king, resolved to atone for that crime, by discovering all he knew, that had been acted, or was then plotting against his majesty. His coming over was made known to Mr. Taffe, a familiar acquaintance of Lunt's wife, and who was represented to Lunt as a person, that had done some considerable service to the public.* To

"* Taffe was an Irish priest, who had not only changed his religion, but had married in king James's time. He came into the service of the present government, and had a small pension. He was long in pursuit of a discovery of the imposture in the birth of the prince of Wales, and was engaged with more success in discovering the concealed estates of the priests and the religious orders, in which some progress was made. These seemed to be sure evidences of the man's sincerity, at least in his opposition to those, whom he had forsaken, and whom he was provoking in so sensible a manner. This is mentioned chiefly to shew, how little that sort of men are to be depended

him Lunt's wife had told, that her husband was lately come out of France; which made Taffe, who pretended to be zealous for the government, enquire how matters stood at St. Germain's? adding, that, if Lunt could discover any thing, that might be serviceable to their majesties, he would introduce him to a person, that would receive his information. Lunt gives credit to Taffe, shews his willingness to make a discovery, and thereupon Taffe brings him to the earl of Bellamont, and vouches for his honesty. After his lordship had heard Lunt's relation, he commanded him to wait on him again in two or three days; which Lunt obeying, and his lordship being somewhat indisposed, he sent Lunt with a letter to sir John Trenchard. Taffe accompanied him thither, and the secretary, hearing what Lunt had to discover, first sent him into Kent, and afterwards commanded him to put his depositions into writing, and bring them to him. Lunt performed it: Taffe heard all the information read, aggravated the crimes, and appeared the most forward of any to have the persons accused brought to justice; and, pretending to be serviceable in knowing the country and people there, he went down into Lancashire with Mr. Aaron Smith and Mr. Baker, and assisted the king's messengers in searching at Standish-hall, and other places.

"Taffe shewed an extraordinary zeal in his majesty's service, but might have been much more useful than he was in finding concealed arms and persons, if he had made more use of his head and less of his fingers. The managers of that affair, and the king's messengers, quickly perceiving his pilfering practices to be very injurious to the inhabitants, and no less scandalous to themselves, were forced to have as watchful an eye upon him, as upon the business they were employed in; though, notwithstanding all their care, he committed some gross felonies. Soon after he came to London, he waited on the lord Bellamont, gave his lordship an account of what persons and arms had been seized, that several gentlemen had made their escapes, and that others absconded to secure themselves: whereupon the lord Bellamont asked Taffe, if this was the business, which Lunt had discovered? Taffe answered, It was, and that Lunt was the main evidence of the conspiracy; was very well known at the respective places, which he had mentioned in his depositions; and had done greater service at his being there, if the Lancashire gentlemen had not received notice from London of their coming ten days before they came to Standish-hall. This account being given to the lord Bellamont, Taffe addressed himself to Mr. Aaron Smith and captain Baker, for the reward of his service; but, finding himself

on. He possessed those, to whom his other discoveries gave him access, of the importance of this Lunt, and was very zealous in supporting Lunt's credit, and in assisting him in his discoveries." 2 Burnet, 142.

slighted and reprimanded for his scandalous behaviour, he grew angry, and resolved to revenge himself upon the government, even to the spoiling of the plot. The friends, relations, and solicitors of the prisoners were no sooner acquainted with his design, but the bargain was struck, and his terms agreed to: 20*l.* were paid him in hand, with assurance (as was afterwards sworn in the House of Lords) of a good annuity for life, to be settled in Lancashire; and, lest he should cool, he was immediately sent into the country to be their counter-evidence, when the trials should commence at Manchester.

"Having thus gained Taffe, and got from unwary Lunt the names of the king's witnesses, and the whole matter of the evidence, the next attempt for defeating the whole plot was engaging Ferguson to write in defence of the Lancashire gentlemen, and to asperse their accusers; and this stratagem had such a notable effect, that the popish mob at Manchester, animated by reading Ferguson's paper (which was almost in every hand in that county) had resolved to prevent the trials of the prisoners, by stoning the king's evidences to death. But those, who knew they would be acquitted, prevailed with the mob to forbear the execution of that inhuman resolution till the trials were ended. And indeed, no sooner were the trials over, and the witnesses leaving the town, but the mob endeavoured to stone them to death, and in such a violent and tumultuous manner, that not only the witnesses, but a gentleman of counsel for the king, the king's prosecutor, and king's clerk in the crown-office, very narrowly escaped with their lives.

"The trials began at Manchester the 16th of October, 1694, where the king's evidence proved, 'That the prisoners at the bar had received commissions from the late king James, to raise war against the present government: and to that end had bought arms, listed and subsisted soldiers at their own charge, &c.' It is affirmed that sir William Williams, though then one of the counsel for the king, endeavoured to baffle and confound the king's witnesses, by asking them several frivolous questions; but, failing in that, he required Lunt to point at the several prisoners by name. In doing this, Lunt happened to point at a wrong man, which mistake might be occasioned by the crowd. However, this gratified the popish mob, and raised a loud laugh. But their mirth continued not long; for, another of the judges commanding Lunt to touch and name all the accused gentlemen with the cryer's staff, he named them all right.

"Witnesses were afterwards produced for the prisoners, but nothing was alledged by them, that could invalidate the king's evidence, except Taffe's testimony, who boldly declared, 'That there was no truth in the pretended plot, the whole being a villainous contrivance between himself and Lunt;' which single declaration, without any oath, out-weighed the testimonies of the ten positive witnesses for the

king; and thereupon sir William Williams, the chief manager of the trial, sat down in the court, and would examine no more witnesses against the prisoners. And so, without calling for the rest of the evidence, the matter was let fall; and, when, the judges gave the charge to the jury, it was in favour of the prisoners; so that they were acquitted, and those that were ordered to be tried after them, were all discharged without trial.

"The whole party triumphed upon this as a victory, and complained both of the ministers of state and of the judges: and sir William Williams, being returned to London, represented the plot as a wicked and horrible contrivance; upon which the government, in abhorrence of such a design, immediately ordered the witnesses to be prosecuted for a conspiracy against the lives and estates of the Lancashire and Cheshire gentlemen. This strange turn being given to the affair, many of the wiser sort of those, who were friends to the accused gentlemen, and dreaded the consequence of a further inquiry, advised them to sit down quietly, and leave it to the government to punish their accusers, if they saw fit; but some lawyers over-ruled this advice, and so the Lancashire and Cheshire gentlemen, on the 24th of November, 1694, brought the affair into the house of commons.

"While this affair was depending, several witnesses were procured against the king's evidences in parliament, by downright bribery, and by telling them they were not to be put to their oaths; and therefore, not being in danger of perjury, might safely and confidently tell all the stories, that were dictated to them.* Indirect means were also used to asperse the earl of Macclesfield, at that time lord-lieutenant of the county of Lancaster, who being a professed friend to the government, was of consequence thought by the jacobites their mortal enemy.

"The house of commons, after several hearings, strict examinations, and long debates,

* "By the late trial, it had manifestly appeared, how little the crown gained by one thing, which yet was thought an advantage; that the witnesses for the prisoners were not upon oath: many things were upon this occasion witnessed in favour of the prisoners, which were afterwards found to be notoriously false; and it is certain, that the terror of an oath is a great restraint, and many, whom an oath might over-awe, would more freely allow themselves the liberty of lying, in behalf of a prisoner, to save his life."

which continued at these several appointed times, the space of eleven weeks, on the 6th of February, 'proceeded farther in reading the information and papers delivered into the house by Mr. Aaron Smith, touching the late proceedings and trials in Lancashire and Cheshire. Mr. Lunt's information was read; as also Mr. Wilson's and Mr. Womball's; and other papers delivered into the house by Mr. Aaron Smith were likewise read; among which were several printed papers. Whereupon the house came to the following resolutions; first, That there did appear to the house, that there was sufficient grounds for the prosecution and trials of the gentlemen at Manchester. And, secondly, That upon the informations and examinations before this house, it doth appear, that there was a dangerous plot carried on against the king and government.' At the same time the commons ordered an act of the pretended parliament of Ireland, held in the year 1689, recognizing the late king James, and two proclamations of that abdicated prince, to be burnt by the hands of the common hangman. Besides this, the house, after having given an order for the taking Mr. Standish of Standish-hall in Lancashire into custody, and their messenger reporting, that he was not to be found, addressed the king to issue out a proclamation to apprehend him.

"This disappointment in the house of commons was no small mortification to the jacobites; yet, in hopes of better success, they laid their complaints also before the house of peers, where, after examining some witnesses, and many debates, the question being put, 'Whether the government had sufficient cause to prosecute the Lancashire and Cheshire gentlemen?' It was carried in the affirmative; though the earls of Rochester and Nottingham appeared with great zeal on the other side, and in conclusion protested against the vote, by which the lords justified the proceedings against those gentlemen.

"The accused gentlemen, notwithstanding these disappointments, at the next Lancaster assizes, in August 1695, brought on trials upon an information of perjury against Lunt, Womball, and Wilson, three of the king's witnesses, who were all found guilty; and afterwards indicted for a conspiracy against the lives and estates of those gentlemen. But, the gentlemen refusing to furnish the king's attorney and solicitor-general with witnesses to prove the pretended perjuries, the prosecution was let fall, and Lunt, Womball, and Wilson discharged."

380. Trial of — CROSBY, in the King's Bench, for High Treason :
7 WILLIAM III. A. D. 1695. [1 Lord Raymond's Reports, 39.]

REX v. CROSBY, alias PHILIPS. B. R.*

CROSBY was indicted for high-treason ; and at the trial at bar he excepted against the evidence of Mr. Aaron Smith, because he had been set in the pillory upon a judgment given against him in this court, upon an information, 34 Car. 2. the record of which he produced. Mr. Solicitor General Trevor and Mr. Cowper, on behalf of Aaron Smith, agreed, That the infamy was always a consequence of the guilt, and not of the punishment ; and therefore (by them) if an innocent man hath an infamous judgment given against him for a crime that does not deserve such judgment, this will not render the party infamous. Then for application, they said, That the crime of which Mr. Aaron Smith was accused, did not deserve such a judgment ; and therefore shall not take away his testimony. And,

Sir Samuel Eyre, justice, seemed to be of that opinion.

But Holt, Chief Justice, gave no opinion as to this point, saying, that he could not impeach the record ; but he was of opinion, that the general act of pardon, 2 Wil. and Mar. gave Mr. Smith a new credit, but did not work by way of restoration, to restore him to his old credit : as, if a person be attainted of felony, he

* " It is great pity this Trial (if taken at large) could not be procured, for the arguments of the court and counsel must have been curious ; so have inserted this short account from lord Raymond's Reports, vol. 1, p. 39. See also Salkeld, 689." Former Edition. See Skinner, 578, 5 Mod. 15 S. 6.

Of the Trial of Crosby I have found, in the Library of All Souls College, Oxford, the Report which constitutes the next Article.

is now incapable of making a purchase to hold, or to give evidence ; but if the king pardons him, he is now become a new creature, and may do both ; but he is not restored to inherit to those persons, to whom he was inheritable before : and the difference is, between a civil disability, which the pardon cannot cure, (Co. Lit. 234. Sir A. Ingram's case) and a criminal disability, which the pardon may take away. And for these reasons the testimony of Mr. Aaron Smith was admitted.

But the principal point of treason charged upon Mr. Crosby being the writing of certain treasonable papers, which the king's counsel endeavoured to prove by comparison of hands, having no other evidence ; the prisoner, Crosby, produced the copy of the act of parliament, for the reversal of the attainder of Algernon Sidney, esq.* in which it is declared, That the comparison of hands is not legal evidence. Upon which the jury found the prisoner not guilty.

Mr. Justice Foster, in his Reports of Crown Cases, p. 198, says, ' In Mr. Sidney's case, it was said, ' Scribere est agere.' This is undoubtedly true under proper limitations, but it was not applicable to his case. Writing being a deliberate act and capable of satisfactory proof, certainly may, under some circumstances with publication, be an overt-act of treason. And I freely admit, that had the papers found in Mr. Sidney's closet been plainly relative to the other treasonable practices charged in the indictment, they might have been read in evidence against him, though not published.— But papers not capable of such connection, whilst they remain in the hands of the author unpublished, as Mr. Sidney's did, will not make a man a traitor."

* See it, Vol. 9, p. 996, of this Collection.

381. Trial of — CROSBY, in the Court of King's Bench, for High Treason : 7 WILLIAM III. A. D. 1695. [Now first published from a Volume of Owen Wynne's MSS. in the Library of All Souls College, Oxford.*]

HE had been dereigned† in Michaelmas term last, and was upon bail ; nor are there many instances of any being let upon bail that was indicted for treason. He excepted against

* This Report commences at p. 163 of the volume, and bears the following title, " The 15th of April, 1695, Mr. Crosby's Trial before Lord Chief Justice Holt and sir Samuel Eyres, in the King's-bench." † So in the MS.

about thirty of the pannel ; the Jury being sworn, the indictment was read in English, and afterwards, at his desire, in Latin‡ ; though the court told him, that this was an indulgence and a favour to him which needed

‡ See the Cases of sir Henry Vane, vol. 6, pp. 132. 143. 169, and of Algernon Sidney, vol. 9, p. 836, of this Collection. But now see, st. 7 Will. 3, c. 3. 7 Anne, c. 21.

not a [have] been granted now, and which he might have more properly desired, when he was deraigned.

It was to this effect: That he had conspired with others, and had treaties about betraying several forts, garrisons, and castles of this kingdom to the French king; about raising of troops and forces within this kingdom, in order to favour the French king in making a descent to raise rebellion among us; that he had writ several notes, letters and memorandums to that purpose; giving an account of their majesties' forces by sea and land; how the same were quartered and posted, and in what station the fleet was divided; when ready to sail, &c.; and all this to procure an invasion from the French, &c. That in his said papers, he gave an account of persons disaffected to their majesties in the several counties in England and Wales, as well of the nobility, spirituality, and gentry; that he named several cities and places where the French might land at, particularly Newcastle, Carlisle, and Falmouth; that he used other ways and means in order to assist the said French king, in invading this kingdom, contrary to the duty of his allegiance, and form of the statute in that case made and provided.

The indictment having been opened by one Mr. Nap first, and then by

Mr. Attorney General (Mr. Edward Ward), who said the treason laid in it, consisted of three parts:

1. Designs to compass the death and destruction of their majesties. 2. To invite the French king to invade this kingdom. 3. The actions and ways whereby the prisoner aided and assisted therein. That as in all treasons there must be overt acts, so here are several instances of that kind: 1. Here are letters and instructions of the prisoner's own handwriting, whereby he does invite and encourage the French to make a descent upon us, in order to levy war, and destroy their majesties; and then he points out the ways and instruments of doing it: 2. By enumerating such of the nobility, clergy and gentry, as he thought would be assisting in that pernicious design: 3. By pointing out and naming the several havens and places where this descent and invasion might be made, viz. at Newcastle, Carlisle and Falmouth, which he undertakes would be soon delivered up to the French king, upon their first appearance. That he frequented the house of one Buckson, where lodged one Mrs. Eliot, and one Mrs. Jones, with others that were chief actors and managers in this conspiracy. The prisoner, who went by the name of col. Phillips, was dogged out of this house by Legatt and Hopkins (two of the messengers) into Lincoln's-inn-fields, and there when they would have seized him, he made his escape into Little Lincoln's inn-fields, where he was seized, and several papers were found about him of his own handwriting: 2. Buckson's house being searched next morning, several other papers were found in Mrs. Jones's chamber: and 3. The messenger finding a rent in the feather-

bed, and several feathers dropped about the floor, and tracing the same to the house of office, found thrown therein a bundle of papers, some sealed and some unsealed; all which are found of the same handwriting with those found in the prisoner's pocket; and to this we will call our witnesses. 1. Legatt and Hopkins, the messengers, who gave an account how they had discovered and dogged him for two days to several places, and to a lord's house between two braziers in Pall Mall, and had at last seized him at Mr. Harcourt's door in Lincoln's-inn-fields; how they searched him, and found the papers, both in his pocket in Mally Jones's room, and in the house of office, some of them sealed, and some of them unsealed; how they had delivered them at secretary Trenchard's, to Aaron Smith, after they had marked them.

Crosby asked them, How they could swear they were the same papers as they found about him, since they had delivered them to Aaron Smith, and that they had been out of their sight and custody ever since the 9th of May last; especially since Hopkins swears he took them from me, and delivered them to Legatt before he had signed them. Hopkins owned he had not delivered them to Legatt, till the next morning before he had signed them (as was objected), and Legatt owned he had delivered them to Smith, but that it was where they were all three present at the secretary's office; and the court over-ruled the objection, that the identity of the papers were sufficiently proved by them, in regard they had marked them before they had parted with them, and that Hopkins had kept them over night in his own custody, locked up, though he did not part with them till next morning.

Buckson. That the prisoner frequented his house for two or three months, but never lodged there; that he did not much mind what company came or went, that he saw the faces of some, and heard the names of others, that one Mrs. Eliot and one Mrs. Jones lodged at his house for a year or two, that he conversed little with them; that one going by the name of Mr. James, lodged there likewise for some time; that one Mr. Harecourt and one called Dr. Broomfield, used to come and go likewise; being asked by Mr. Attorney what he remembered of their discourses about the winds, and the prisoner's being to go to sea, and about the prisoner's design of going out of town; and saying he cannot be positive that he heard any such discourse, or by whom, Mr. Attorney asked him, if he could remember what he swore before the secretary; to which Chief Justice replied, that it mattered not to the court or jury what he swore there, unless he gave it also in evidence here *viva voce*.

Crosby. That it was hard he should be charged with papers found in a house of office, which is in a common place, and stands in a common yard, where many resort who do not live or lodge in the house; where the very messengers own they were the night before;

and where one Mr. James (whom they supposed to be sir James Montgomery, against whom they had a warrant and a proclamation), did also lodge, with divers others.

Mrs. *Buckson*—That she saw the prisoner frequently at her house who went by the name of col. Phillips, and also one lady Phillips, and sir Andrew Foster, and Mr. Harcourt, and that there lodged there one called Mrs. Elliot, and whom the prisoner used to call coz. Mally, that she remembered nothing of their discourses, was seldom in company with any of them, but sometimes saw them go in and go out.

Aaron Smith being called to prove the identity of the papers; Crosby objected against him, as an illegal witness, for that he had been pilloryed, and the record being read, the judgment was found to have been so, upon an information exhibited, by the then attorney general, wherein was laid out; 1. His character, as a *homo perniciosus et prave mentis*. 2. His crime for putting instructions (or rather a libel) into Colledge the Joiner's hand, at his trial in Oxford,* wherein he deraigned the government and justice of it. 3. His punishment, which was to be pilloryed, and fined 200*l*.

The *King's Counsel*—That though he was pilloryed by a rule and judgment of this court, yet the case was judged then and since very hard, since those instructions were never made use of; yet that it does not take away his testimony, for it is not the punishment but the offence that makes one infamous.—That there might be some things in those papers which those times could not well bear; but no use was made of them.

Court. Let the judgment be never so erroneous, or the proceeding ever so hard; yet we find it upon record, and that judgment nor record any way quashed.

Crosby does desire he might have counsel to argue it, and named Pemberton, Winnington, and Parot, whom the court allowed him.

Aaron Smith desired that, for the clearing of his credit to the court and jury, he might have leave to acquaint them with some of the circumstances of the proceedings against him; how that the record was altered, though in a criminal matter, after he had pleaded to it; how that it should have been tried by a *nisi prius*, but that they surprised him with an Oxford jury, and tried him in this court, and that Pemberton the ch. justice had—

Ch. Justice stopped him, and said they were upon another business, and that the unravelling of the proceedings, in his case, was no evidence against the prisoner at the bar.

Winnington, (no other appearing), for the prisoner; that here was a judgment and an execution upon it; and that it did not appear, it had been any way reversed, though the law prescribed methods of doing of it by writ of error, &c. and that though there was a general pardon since, (as the court observed) yet that pardon had no clauses in it that took away the disability which was incurred by the execution

* See his Case, vol. 8, p. 549.

of punishments upon the offences therein mentioned; it only pardoned those offences and the punishments due for the same *pro futuro*, but do not take away the disability already past, and incurred; and where one's credit is once taken away by an offence, and where there is no restitution of it, it remains still lost; and the pardon bars only further proceedings against the offence; here was no writ of error obtained to reverse, and to restore the person as he was before the judgment, and though the offence were taken away by a pardon, yet the credit of the party must be diminished thereby, and no pardon nor oblivion can so far take away the consequences of a crime (though it may pardon the punishment,) as to make a man a new creature; as long as the old lump and the presumption of the old malicious spirit, still remains [He might have said that the House of Lords had refused to grant Smith to reverse his judgment by writ of error.]

Ch. Justice—That he was of another opinion, that a general pardon pardoned all consequences and disability of the persons in all criminal matters, though not in civil; for it could not give away damages for forfeitures, &c. &c.: so in the case of perjury, a pardon frees the offender, and takes away all exceptions against him*: so in all felonies, a pardon sets the felon right; so that it was his opinion, that Smith's testimony was good from the time of the pardon, as much as an alien is a *legalis homo* from the time of his denization.

Just. Eyres was of the same opinion.

Smith being called to speak to the paper, No. 57; he said Crosby owned it to be his hand-writing, before Secretary Trenchard, and the paper was not since out of his custody, or Mr. Bates's (who was likewise sworn) only he had shewed it to the king's counsel.

Brown (Clericus) *notum habuit manum*, in king Charles the second's time, at the college of Dublin, where he saw Crosby write 12 or 20 times.

Crosby asked him, how long ago was that? is it 30 years ago? if he knew his Greek characters, or had seen him write any?

Brown said, no.

Crosby—That there was Greek in this paper, and therefore he could not swear it was his hand.

The paper was read, which, as the chief justice said, was all *gibrish*; for that a letter or a syllable stood for a word: English was writ in Greek characters, and no coherence in the whole paper; being but a sort of memorandums.

Crosby asked *Brown*, what countryman he was?

Brown. The same with yourself, an Irishman [he might have said his cousin german], and that he was sent over by the lords justices

* See Mr. Hargrave's very copious and learned investigation of this subject. *Juridical Arguments and Collections*, vol. 2, p. 221, as referred to in vol. 7, p. 1052-1090. See also vol. 7, p. 296.

of Ireland, and was not promised any reward for being evidence, (nor any preferment as the prisoner objected to him) by Mr. Steers.

Brown and Shirley (Clerici, though the last not in his habit) called to prove his hand as to the paper, No. 58, 59.—*Shirley*. That 'tis twelve or thirteen years since he saw him write; but though it was like the hand he writ then, yet he called God to witness, that (as a man that did eat and did not believe might be damned) so he could not but say it was like it; and yet could not say it was his hand: but saw him write often, though long ago, and had his contraction book which he writ at the college of Dublin.

Crosby desired counsel* as to the matter of comparison of hand†, whether that (were it ever so fully proved) was sufficient evidence to convict of high treason.

Attorney, Solicitor, Serj. Gould, Conyers, Cooper, Hawkes†. That here is a paper (No. 57, 58) he owned to be his hand; here is another torn paper found in his pocket, part of which paper is the same with the paper (No. 58) found in the house of office; 'tis probable, ergo, 'tis possible§, nay, 'tis a strong presumption, that the paper (No. 58) is the hand of Crosby; here are two witnesses that swear *qd. notam habent manum*, and they saw him write frequently; and that 'tis to be observed in what manner the papers were found: 1st, it was in hot pursuit, he was dogged and seized, and the papers taken from his pocket; and at the same time the others thrown into the house of office: 2nd, his hand is owned by himself in one paper, and is proved by two witnesses.

Ch. Justice. (1) There are not two witnesses to his hand; neither do they say they saw him write within twelve or thirteen years; one says it is like it: (2nd) and then 'tis a strange inference, that because a paper in his pocket has a *g*, the same with that in the house of office, that both must be his hand, which neither is proved; besides that there are many differences in the expression of one and the other paper. (3) It is not proved how these papers came to the house of office; 'tis clear the prisoner did not throw them, for he was then in hold; and though they presume they were thrown about the same time, yet presumption is not evidence in high treason; (4) and though two proved his hand, yet a comparison of hands is no evidence in treason; (5) and though the paper has been read as a paper found in the house of office, and has very odd things in it, yet I can but observe that it mentions many persons of honour and quality, noblemen, clergy, and others, as disaffected to the government, whom we all know to be otherwise; and names sir

William Portman, who, to my knowledge, has been dead five years; and so the paper itself comes within the act of indemnity now read to you.

Crosby offered an attested copy of reversal of col. Sidney's attainder*, as the judgment of the parliament, in evidence, that a comparison of hands is not a good sufficient proof for high treason (which was read); and as the proof against him was a comparison of hands, so all convictions, judgments and attainders thereupon were reversed as erroneous.

The *Attorney* and *Solicitor* offered, that the case was not the same, for that there was no proof found, but a single comparison; here is a comparison proved by two witnesses, and 'tis owned by himself.

Ch. Justice. The case is the same; for what he owned is not evidence alone; that is not sufficient, and therefore must be supplied by the comparison: that since you have no better proof, I'll direct the jury.—Gentlemen, the prisoner is indicted of high treason, for which, by the statute of Edw. 3rd, there must be two witnesses; here are several papers produced, and some of them have been read to you; and the matter contained in them is of a very odd nature, and shews the prisoner (if he be the author) to be very busy-headed, and wise in his own conceit, but is no treason in itself, and the evidence does not come up to prove it so; for hands may be like one to another; and supposing it be his hand, it is not proved upon him by two witnesses, beyond exception, as the law requires.

1st. Were these papers ever so treasonable, they are addressed to none, though the French king be mentioned in them, and that the indictment supposes them to be contrived for to invite him over. (2) Those papers in Jones's room, the prisoner is not chargeable with, here is no manner of evidence to affect him with them, for (3) it is not so much as proved that he ever lodged there in that room, or at Buckson's house; (4) and for those thrown into, and found in the house of office, there is but presumption likewise, that they are of his hand-writing, though it be to be presumed likewise, that they were thrown there after he was in custody; and so not by him, but by somebody else. You have heard how one Mr. James (supposed to be sir James Montgomery) lodged at Buckson's house, and other men and women; so that if you are not satisfied these papers are of the prisoner's hand-writing, you must acquit him.

The Jury withdrew a quarter of an hour, and brought him in Not Guilty: and the Chief Justice dismissed him with a civil admonition that he should take care not to meddle with such matters for the future; and though on his papers he arraigned the justice of the kingdom and the proceedings at the trial of others; yet he had no reason to say but that he had had as fair a one as any Englishman could wish.

* As to allowance of counsel, see a Note in vol. 5, p. 466, of this Collection.

† See the Case of Algernon Sidney, vol. 9, p. 317, of this Collection; and for more relative to comparison of hands, see p. 305 of this vol.

‡ This must be Hawles. § So in MS.

* See it in vol. 9, p. 996.

382. Proceedings between the KING and THOMAS KENDALL and RICHARD ROE, in the King's-Bench, on an Habeas Corpus upon a Commitment for High Treason: 7 WILLIAM III. A. D. 1695.

[Of the Conspiracy for the Assassination of king William and for the Invasion of England, out of which arose the Proceedings against Kendall and Roe, and the Trials which immediately follow them, "A True and Impartial History"* was published by the well known sir Richard Blackmore† in 1723, shortly after the discovery of Atterbury's Plot.

To this History, Blackmore prefixed a copious Preface, in which he gives the following account of his work:‡

"History is to men of contemplation, of the same use, as books of precedents are to men of business, especially legislators, judges and advocates: whenever any things happen extraordinary they have recourse to the like events, that have occurred in former ages, and by duly considering and comparing times and circumstances, they are enabled to make a more solid judgment concerning them. This has induced me to publish at this time,

* "This I have never seen, but suppose it at least compiled with integrity." Johnson.

† He was physician to king William, who knighted him.

‡ The stile of Blackmore certainly is not unexceptionable. Johnson has noticed the commercial hue with which it was dyed by his residence among trades-people. He expresses himself in "language," says Johnson, "such as Cheapside easily furnished: he had lived in the city till he had learned its note."

In the Preface to his History of the Conspiracy, his language is tinged by his medical profession. "It is certain," he informs his readers, "that the late men in power left the public affairs to the present ministers encumbered with many heavy burdens, and involved in almost inextricable difficulties; and to heal all the breaches, and cure all the grievous distempers of the nation, when the administration was committed to their care, without any complaints and dissatisfactions of the people, was a task unequal to the most consummate wisdom, and the greatest capacity and application. Is it a just objection against them, that they were not state-surgeons, skilful enough to attempt, carry on, and complete the cure of a nation deeply wounded by other hands, without giving some pain by their remedies and operations?"

the following Narrative to the world, after it has lain by me many years neglected, and almost forgotten.

"The occasion of writing it was, that soon after the Plot against king William's life was detected and disappointed, his majesty having thought fit that a true and impartial account of it should be made public, and having left it to the lord keeper Sommers, and the duke of Shrewsbury, to appoint the person that should draw it up, I was sent for by the lord keeper, and was by that great man engaged in this undertaking. The better to enable me to go through with it, I was admitted to several conferences with the noble lords above-named, and with the earl of Portland, who having the first notices of the conspiracy, was acquainted with the steps taken in it, before it was made known to the other two: and I was also furnished from the secretary of state's office, with authentic copies of the several depositions and other papers, that I have thrown together and printed at the end of this Narrative, as vouchers of the facts recited in it, referring the reader to them for his further satisfaction, that the thread of the discourse might not be interrupted.

"This short History having been perused and amended by the Lord Keeper, and the duke of Shrewsbury, and having undergone a second correction by his grace, was in a few weeks completed and ready for the press. But upon what views and reasons of state I cannot pretend to determine, the duke thought fit to delay the publication of it so long, that the negotiations for a treaty of peace with France intervening, it was then judged improper to let it go abroad.

"But I am now prevailed upon to make this narrative public, not only because it is in itself a curious piece of history, at least, as to a great part of it, and backed with the authority of sufficient vouchers: but because it is of weight and importance to all, who wish well to the liberties of Great Britain, and the

reformed religion; and may be of great use to many discontented men at this time, to make them beware of diminishing the honour of the king, and speaking reproachfully of his person, or his administration; lest they encourage Popish bigots, and Protestant Jacobites, to attempt the subversion of the present government, the overthrow of our constitution, and even the life of his majesty, by the same steps and motives that encouraged some of the conspirators to solicit and assist a foreign invasion, and others to assassinate king William of glorious memory, that by these execrable means they might re-establish a Popish prince upon the throne."

And he thus concludes the Preface

"What particulars in this Narrative of inferior moment are not confined to the vouchers annexed, I received from the ministers of king William whom I have above-named."

His History is also accompanied with the original Informations and Depositions respecting the Conspiracy, which being authentic documents, illustrative of the proceedings against such of the Conspirators as were brought to trial, and of the designs and conduct of them and their associates, are here inserted.]

INFORMATIONS AND DEPOSITIONS, TOUCHING THE CONSPIRACY AGAINST THE PERSON AND GOVERNMENT OF KING WIL- LIAM THE THIRD.

PAPER THE FIRST.

DEPOSITION OF RICHARD FISHER.

Captain Richard Fisher of Dartmouth street, Westminster, maketh oath, that he met with sir George Barclay or Bartlet about the third of this instant February, at the Cock in Bow street, where was also present a monk called Johnson, alias Harrison, who told him, the said Richard Fisher, in case he knew the said sir George Bartlet, not to take any notice of him; whereupon he the said Johnson, alias Harrison said to sir George Barclay, This is the gentleman I was to bring to you, you may trust him, and speak freely to him: Upon which the said sir George Barclay asked this deponent, whether he would be engaged to be one of those that should seize the prince of Orange: This deponent answered him, that he would. Then replied sir George Barclay to him, let us see which way you will propose. This deponent said, when he was a hunting. Sir George Barclay answered, that is very

well, but added, What if it should be done as he comes to chapel to St. James's? The deponent answered, I think it would do very well. Sir George answered, what strength would do? The deponent replied, thirty or two and thirty, I think would be enough, because the usual guards were but five and twenty, and those not half loaded. Upon which sir George Barclay replied, then we will have about six footmen, who should be in the little house at Hyde Park Gate, and come out ready to shut the gate to make a stop, and then we will fall upon the guards with sword in hand. And therefore let us be ready and meet very often, in order to the carrying on this matter. Hereupon, after several other meetings between the deponent, the said sir George Barclay, and the said Johnson, alias Harrison, and one other person, whom this deponent knoweth not, it was at last concluded, on or about the thirteenth instant of February, to execute the said design of seizing the prince of Orange; and in case of opposition from the guards, to kill him; and in order to this, spies were sent to Kensington, who waited there all night; but the prince of Orange not going abroad as he used to do, on the day following being the fifteenth instant, the design aforesaid was put off for some days. And on the Monday following, they met again at the sign of the Cock in Bow street to discourse of the said design; but that meeting soon ended, and they appointed to meet next day at the sign of the King's Head in Holborn, where the deponent only meeting the said Johnson, alias Harrison, they two went to the sign of the Old Griffin not far off, to which place the said Johnson, alias Harrison, brought the said sir George Barclay, who coming in, said, captain Fisher, what must we do now? The deponent answering, what you will: Then sir George Barclay said, what do you think of seizing the prince of Orange between Brentford and Turnham Green, as he shall come next from hunting in the evening; or perhaps we may have an opportunity of seizing him at Mr. Lattin's house in Richmond, when he would be very weakly guarded, for we resolve to fall on with sword in hand, and for that purpose strong pushing swords will be better than cutting swords; and if we fail these ways, we resolve to do it on Sunday next, as he the said prince of Orange shall be coming to St. James's, by shooting one of the leading horses, so as to stop the coach in Hyde Park Gate; whereupon the said Johnson, alias Harrison, said, and shoot also one of the wheel horses, and then they are both stopt; and then the said sir George Barclay, alias Bartlet, said, this would be no rebellion or assassination, for he was no king. This deponent further saith, that the said sir George Barclay, alias Bartlet, sent him on Sunday the 9th instant to view the Tower, and see how strong the guards were there, in order to seize the Tower for the late king James; which this deponent did, and afterwards having made a report to him and the said Johnson,

alias Harrison, it was thought convenient to desist from that enterprize, and to pursue the former design, which said design of seizing the person of the prince of Orange, was to be followed with a general insurrection in England and Scotland, and by an invasion from France, the ships being ready, and the men to embark with the late king James at the head of them, as the said sir George Barclay, alias Bartlet, and the said Johnson, alias Harrison, informed this deponent: And the said Johnson, alias Harrison, told him, this deponent, that king James had sent orders for executing the design aforesaid, and that the said sir George Barclay, alias Bartlet, had brought over the said orders from king James, with him, he being then lately come from France: And this deponent further saith, that he has been credibly informed, that one major Lowick, alias Jackson, George Porter, captain Chernock,* captain Stow, captain Walbank, captain James Courtney, Thomas Bartrom and Sherburn, and several others, whom this deponent knoweth not, to the number of forty or more, were engaged in the said design of seizing and assassinating his majesty, whom they called the prince of Orange, in the manner aforesaid, together with the said sir George Barclay, alias Bartlet, and the said Johnson alias Harrison, whom this deponent knoweth to be guilty of this conspiracy in the manner before declared. And this deponent further saith, that in case his majesty had gone out a hunting either on Saturday the 15th instant, or on Saturday last, the 22d instant, the said design of seizing and assassinating his royal person, had been attempted, and, as he believes, put in execution. And this deponent further saith, that in order to the carrying on of the said design, he was to provide five horses and arms to be in readiness for himself and four others, whereof Henry Fitz Patrick was to be one; and then to meet the said sir George Barclay, alias Bartlet, major Lowick, and two others, whose names this deponent knoweth not. The deponent further says, That the first horsemen, who should be ready to execute this design, were to be lodged at the King of Bohemia near Turnham Green, and the rest as they came, to be in other inns thereabouts, the greatest number in one inn not to be above seven or eight; and there to be ready till the king should be returning in the evening. The deponent says, that in the beginning of the said consultations on or about the fifth instant it was discoursed between him this deponent, the said sir George Barclay, alias Bartlet, and the said Johnson, alias Harrison, about seizing on the king in Kensington House, in the night to have secured the garden with about forty men, by ladders to be provided for that purpose; and in case they could not find the king, to have set the said

* He was one of the fellows of Magdalen College Oxford, who submitted to king James's nomination of Farmer. See the proceedings against Magdalen College, *ante*, p. 1, of this volume.

Kensington house on fire, and at the same time to have seized on the field pieces, and the guards about Whitehall. This deponent further says, he met with major Lowick about the 7th or 8th instant at the Cock in Bow street, where he the said major Lowick said he would do his best to carry on the said design, and would be ready on all occasions, but that he would speak with but one person at a time, by reason of the late act of parliament, which makes one witness of no effect.

25th February 1695-6. RICHARD FISHER.

Dictus Richardus Fisher, jurat
coram me, GULIELMO TRUMBULL.

The INFORMATION of captain GEORGE PORTER, taken before a Committee of the Lords of the Council, on Saturday the 14th of March, 1695.

PAPER THE SECOND.

(Copy.) This informant saith, That about the latter end of May, or beginning of June last, there was a meeting at the Old King's-head tavern in beyond the Royal Exchange, where were present, the e— of A—, the lord M—, sir John Friend, sir William Perkins, sir John Fenwick, Mr. Chernock, Mr. Cooke, and this informant.

The above mentioned persons dined there, and Mr. Goodman came into their company after dinner.

Several things were talked of before dinner concerning the best ways of bringing back king James; and after dinner, several proposals having been made, it was agreed on by the whole company, to send captain Chernock to king James, which he accepted of; and he was to desire king James in all their names that he would borrow 10,000 men of the king of France, viz. 8,000 foot, 1,000 horse, and 1,000 dragoons; and it was said in the company, that if the king of France meant well to king James, he could not refuse him so small a number of men: That there were very few forces then left in England, and there were a great many people dissatisfied, and therefore they could not choose a fitter time. Chernock said, he did not care to go upon a foolish message, and desired to know what he might assure king James of from them: Whereupon the above-mentioned persons answered, they could make at least 2,000 horse among them; and they all rose up and desired Chernock to assure king James, that upon notice from him where he intended to land, they would be sure to meet him with that number of horse.

About a week after, all the above-mentioned persons (except the lord M—) met at Mrs. Mountjoy's, a tavern, next door, or very near sir John Fenwick's house. Mr. Chernock had desired that meeting to be satisfied before he went, whether they kept to the former resolution of meeting king James with 2,000 horse; and they all agreed to it, and desired to beg of the king to make what haste he could.

Chernock told this informant, he would go away for France in two or three days after this meeting.

This informant did not see Chernock again, till he was committed for the riot; and about four or five days after his commitment, Chernock came to see him, and told this informant, he had been in France and had seen the king, and that the king's answer to their proposal was, That he took it very kindly, but could not do any thing that year; and Chernock told this informant, that he had brought several from the king to my lord A——, sir John Fenwick, and several other persons of quality that he did not name.

GEORGE PORTER.

Jurat, 14 March, 1695.

Coram me JA. VERNON.

INFORMATION of Captain GEORGE PORTER, given upon oath before a Committee of the Lords of Council at Whitehall, the 3d of March, 1696.

PAPER THE THIRD.

(Copy.) This informant saith, That he knows sir George Barclay; that the first time he saw him since his last coming into England, was about a month ago at this informant's lodgings, at Mrs. Conant's house in Norfolk-street, and that Chernock, who lodged in the same house, brought him to him; and sir George Barclay told this informant, that he came from France about three or four months before.

That this informant has heard sir George Barclay say, that he came over to put in execution a design upon the king's person.

That Chernock told this informant, that the said sir George Barclay had 800*l.* given him by Mr. Caryll, secretary to king James, for providing men and horses for an attempt upon the king's person; and this informant has heard sir George Barclay complain of the smallness of the sum for such a design.

That sir George Barclay told this informant, he intended to buy forty horses; but finding they had provided some, he would buy but twenty.

That Chernock told this informant, that sir George Barclay had a commission from king James for an attempt upon the king's person, and that sir William Perkins had read it, and that the commission was all of king James's hand-writing, that it run for raising and levying war upon the person of the king.

Sir William Perkins owned to this informant, that he had seen the commission, and sir George Barclay told this informant, that he had such a commission.

This informant saith, further, That besides the twenty horses provided by sir George Barclay for this design as is above mentioned, Chernock undertook to provide eight horses, sir William Perkins five.

This informant undertook for seven, and major Loick was to find three horses for him-

self and two persons more, whereof Bertram was one, as he heard Chernock say.

That three of sir William Perkins's horses were to be mounted by Chambers, Lee, and another person, who was a servant of the said sir William, but this informant doth not know his name; and sir William Perkins's other two horses were to be mounted by two persons, that this informant was to provide.

This informant heard sir George Barclay say, that about twenty or twenty two persons were come from France, who had been officers and were to be concerned in this design; and that some of them came over before him, some with him, and the rest after him.

This informant saith further, That several consultations had been held as to the manner of attacking and assassinating the king.

That these consultations were held, some at this informant's lodgings in Norfolk-street, others at the Globe tavern in Hatton-garden, at the Sun-tavern in the Strand, and at the Nag's-head in James-street Covent Garden.

That at the consultation at this informant's lodgings, were present sir George Barclay, Homes, Chernock, and this informant.

That at the consultations, besides the persons above mentioned, were present sir William Perkins, Rookwood, King and Knightly, and that these several consultations had been held within these three weeks, or a month, or thereabouts.

This informant saith further, That there had been two ways proposed for assassinating the king; the one by an ambuscade of foot, to be laid in a wood not far from Mr. Lattin's lodge, near Richmond.

The other way was by a number of men on horseback, who should attack the guards and the coaches, as the king came from Richmond some Saturday, and it, was resolved to wait for him upon Turnham-green; this latter way was best approved of and agreed to.

Some days before Saturday the 15th of February last, this informant, King and Knightly, went to view the ground at Turnham-Green, and about Richmond, and gave an account thereof the same night to sir George Barclay, and others at the Nag's-head: a day or two after that Durant went to Turnham-Green and Brentford, and took a list of the inns and stables upon and near to Turnham-green, and that this informant was to be with the rest of the men at Brentford; that Rookwood was to be with sir George Barclay, and Chernock was to be with this informant.

This informant says, That sir George Barclay told him, that there were two orderly men appointed to wait at Kensington, to give notice when the king went a hunting.

That Chambers was one of them, as he told this informant, and to that end he took a lodging near the guards at Kensington, and he was to give notice when the king went out.

The other person was Durant, a Walloon, who was to give notice when the guards went.

This informant saith further, That the per-

sons employed in this design were to be divided into three parties. It was intended that two of them should attack the guards with their swords only, and the third party at the same time were to set upon the coach, where the king should be.

Rookwood was to command one of the parties to attack the guards and this informant the other.

That sir George Barclay was to be at the head of eight or ten men, who should set upon the coach where the king was; and it was said and agreed among them, that they would cut off the king and all that were with him in the coach.

That this informant hath a musketoon, which carries above six bullets, and he told Pendergrass, who was to be of sir George Barclay's party, that he should have it with him.

Sir George Barclay told this informant, that when the king should be at Richmond, he had ordered a man to wait at Kew-Ferry, who should give notice when the guards came back thither, to stay for the king, to the end that every body might get ready.

It was agreed among them, that when notice should be brought them of the king's going to Richmond, that all concerned should then slip out of town by three or four in a company, and set up their horses in the inns marked out at Turnham-green and Brentford, until they had notice of his coming back.

This informant remembers that it was an expression used, but he cannot recollect by whom, that assaulting the king in this manner was no more than attacking him in his winter quarters, or than killing him as he was passing from one town to another in Flanders.

This informant further saith, That Knightly, King, Homes, and Durant, were to be of sir George Barclay's party.

Chernock told this informant, that Counter, who was lately come from France, was to be another of sir George Barclay's party; and also Bertram, whom Chernock told this informant he hoped to have, but Lowick had carried him to sir George Barclay.

Chernock further told this informant, he had sent for Thomas and Bevill Higgons out of the country, and had proposed the business to them, but they refused to be concerned in an attempt upon the king's person.

This informant saith further, That Cranburn, Keyes, Pendergrass, and Kendrick, knew of the intended assassination, and that he told them of it, and they promised to go along with him.

This informant saith further, that the day before he went to view the ground at Turnham-Green and Richmond, he dined at the Nag's-head in James-street, with sir George Barclay, sir William Perkins, sir John Friend, Ferguson, and Homes; that Chernock either dined there or came in after dinner; that Harrison, alias Johnson, a priest, came to them after dinner; that they discoursed there privately one among another, of the design upon the king's person, and enquired what men and horses each could

provide, and it was talked publicly among them all of the preparations that were making in France all along the sea coast: those who talked about the design in private, were sir George Barclay, sir William Perkins, Chernock, and this informant. Sir John Friend observing their whispers said, he desired to be fairly dealt with, that he was as ready to serve the king as any man, and that he fancied something was behind the curtain that was concealed from him.

It was then sir George Barclay whispered to this informant, that the duke of Berwick had been here, and said he would not have told him of it, but that he was gone over again.

This informant saith further, that on Friday the 14th instant, this informant, to the best of his remembrance, dined at the Blue Posts in Spring-Garden, but he positively says, he sent for Kendrick to come to him where he dined; and this informant told Kendrick to be in a readiness to go out with him next day, and he would provide him a horse, and bid him bring Sherburne with him: that accordingly Kendrick brought Sherburne the next morning, and this informant then told Kendrick of the design to assassinate the king, and Kendrick agreed to go with him: but word being brought that the king did not go out that day, this informant bid Kendrick be in a readiness against the Saturday following; and he promised he would.

This informant saith further, that Keyes hath lived with him a year and a half; that this informant acquainted him with the design of assassinating the king, and employed to hire horses for that purpose: that the said Keyes had hired him two horses for Saturday the 15th of February, when the execution was to be done; and had likewise enquired for horses for Saturday the 22d of February: that the said Keyes was to have been mounted by this informant, and to have gone out with him, and to have the same arms the others had, viz. a sword and pistols.

This informant saith further, he sent for Pendergrass out of Hampshire some days before the 15th of February, and acquainted him with the assassination of the king, and he agreed to be one concerned.

This informant saith further, That he sent for Plowden out of Hampshire, who came up some days before the 15th of February; that this informant acquainted the said Plowden with this design against the king, and he agreed to go with him on Saturday the 15th of February. Plowden brought up a horse of his own, and this informant lent him a saddle, and pistols. The said Plowden came to this informant, to the Blue Posts in Spring Garden on Saturday the 15th of February, in order to go out with him that day; but the business being disappointed by the king's not going a-hunting, Plowden told this informant, he would go out of town, and be back again the Thursday or Friday following; but he did not come as he had promised.

On Friday the 21st of February last, this informant was at the Sun Tavern in the Strand with sir George Barclay, sir William Perkins, and Chernock, and they had a great deal of discourse about the disappointment of the Saturday before; some were afraid the design had been discovered, others said, if it were so, they should not be together as they were; and it was again resolved among them, that if the king went a-hunting the next day, he should be assassinated; and it was agreed it should be done in the same manner as had before been resolved on. Sir George Barclay told this informant, that notice would be brought to him, if the king went out, and this informant should be acquainted with it.

While this informant was at the said tavern, Kendrick, Keys, and Cranburne came to him thither, and this informant was with them in another room. This informant then acquainted them, that the design of assassinating the king would be put in execution the next day, if he went a-hunting. Kendrick came thither with his arm tied up, and said, he had got a fall into a cellar, or some building, which had disabled him; and he was sorry he could not go with him. This informant asking Kendrick for Sherburne, he said, he asked so many questions that he did not like him, and so he let him alone. Sir William Perkins sent word to this informant, on Saturday the 22d of February, in the morning, that if he wanted three horses, Mr. Lewis, gentleman of the horse to my lord Feversham, would help him to them, and that there were three lusty geldings in Somerset-house-yard, and one of them had all furniture ready.

The said informant saith further, That sir William Perkins formerly told him, that the said Lewis had provided him 30 or 40 saddles, which he did under colour of buying them for the marquis of Miermont, as sir William Perkins believed.

While this informant was at the Blue Posts in Spring Garden on Saturday the 22d, La Rue and Brierly brought him each of them a man, that were to go along with him that day; and notice being brought again, that the king did not go out, the said persons said, they hoped they should go some other time. Keyes bringing this informant word, that the guards were come back all in a foam, he concluded the business was discovered, and went out of town within half an hour after, and then went and concealed himself at a house he had been told of by Carter and Davis, two persons he had known in Newgate, who were committed for counterfeiting the Bank-notes.

This informant saith further, That sir William Perkins hath a commission from king James for a regiment of horse, as sir Wm. Perkins told him. Sir Wm. Perkins and Chernock told this informant, that sir John Friend had a commission from king James for a regiment of horse, and that Blaire, who is his lieutenant-colonel, had procured it for him; and this informant has heard sir John Friend own

he had a commission, and would be in a readiness.

This informant saith, that Chernock is colonel Parker's chief correspondent, and that he told him 300*l*. was paid for Parker's escape, but he doth not know to whom.

Chernock told this informant, that sir John Friend had paid 100*l*. towards Parker's escape; and this informant says, that sir John Friend owned the same to him when they dined together at the Nag's-head, as also, that king James had sent him back the money by a messenger, but he durst not ask him for it, therefore he had only received 20*l*. of it.

Chernock further told this informant, that Mr. Tempest of Durham had a commission from king James for a regiment of dragoons, and that he had every thing in a readiness.

This informant saith further, that he was to have the first troop in the king's regiment of horse, whereof Parker is colonel, and that Parker brought him over the commission, as also commissions for his lieutenant and cornet, and that he had told Mr. William Howard he should be his lieutenant, and Mr. Luke Norton, that he should be his cornet, and that he had commissions for them, but never delivered them out.

This informant saith further, that Goodman had a commission from king James for a troop in Parker's regiment, and that he was provided with arms and saddles, and that this informant gave Goodman the commission sealed up.

This informant saith further, that he and Goodman had had discourses two years ago, about a design to seize, or carry off the king, and that they had acquainted sir George Barclay with it, who was then going for France, that he might propose it to king James.

This informant saith further, that on Saturday the 15th of February, Durant came to him all in dirt, having rid from Kensington to acquaint him the guards were gone out; and on the 22d of February, this informant sent a list of the men he had ready to Chernock, by Cranburne, who brought him back the same list, with the names of Chernock's men inserted, which this informant afterwards tore, when he found the business was disappointed.

This informant saith further, that sir George Barclay proposed to them, that when the assassination should be over, they should keep together till they came to Hammersmith, and then disperse, and get into the town by several ways, in small companies, and they should not need to lie long concealed, there being a sudden invasion expected.

GEORGE PORTER.

Jurat 3 die Mar. 1695-6,

Coram me Ja. Vernon.

SOME DEPOSITIONS of FRANCIS DE LA RUE, against several of the Conspirators, who intended to murder his Majesty.

PAPER THE FOURTH.

(Copy.)—In the year 1694-5, in the months of January, February, March, and to within

very few days of the king's going to Flanders, there were several meetings between sir William Perkins, Porter, Chernock, Goodman, and Stow, to contrive how to carry the king's person alive to king James in France, which Porter told the deponent, that they had offered that king to do, if he would send them a commission for it, which was expected a long time; and that their design was, if they could not carry him away alive, to kill him, and pretend it was done by a random shot, in firing at the guards; but the commission not coming, Porter told this deponent, they would do it without, being provided with horses and men; but they could not get a vessel ready time enough before the king departed for Flanders, to carry them off after the execution of their barbarous design; which put an end to their project that year. Most of this design was imparted to the deponent, by Porter; he was also in the company of Chernock, sir William Perkins, Porter, and Stow, three or four times, when it was talked on, though Chernock often told him, that he believed the design would come to nothing.

This deponent further declares another wicked design against his majesty's sacred person, which was to have been put in execution on Saturday evening, being the 15th of February, 1695, at the king's return from hunting, by 45 or 46 persons, most of them having been officers under king James; but they were prevented that day by some impediments and oppositions in their cabals, &c. besides, the king did not go a hunting that day, and therefore it was deferred till next Saturday, being the 22d of February. The chief of these conspirators, as the deponent was informed by captain Porter, and lieutenant King, were, sir George Barclay, Chernock, and Porter, which procured their several numbers. Sir George Barclay was the commander in chief, having brought over from France a commission from king James, which, as they told this deponent, was to attack the prince of Orange his person, in winter quarters, which commission was interpreted by a council of war, held at St. Germans, to take off the king by what means they could; to which end he came into England with a brigadier of king James's guard, named Rookwood, and a sub-brigadier, with 16 chosen men out of the two troops, and was recommended to Porter and Chernock, as fit persons to consult and advise with, having laid a scheme, and contrived the matter last year, and who was also to assist sir George with their friends to make up a party strong enough: and they went to view the roads several times, and to pitch upon the fittest place to attack the king's person and guards: as also Durance, King, and Knightly went several times towards Brentford, Richmond, and Turnham Green, to the same purpose, as King and Porter told this deponent, and he was asked to go with them several times, but he neglected it, where they would have shewed him the several ways and places they proposed for the execution of

this wicked design, viz. by an ambuscade near the king's house at Richmond, with a party of horse at a distance to come up and attack the guards upon notice from the ambuscader's fire, or all to attack his majesty by day all on horseback, &c. But at last it was agreed to do it at Porter's old place, as he told the deponent, which was at the end of the lane in the night, coming into Turnham Green, which was to be done, viz. sir George, with eight (of which number was Pendergrass) was to attack the king's coach, and assassinate every body that was within it, and in the other coach, and the officer of guards with the two troopers on the van-guard, whilst in the rear Rookwood with his party of one side of the lane, and Porter and Chernock with their party that they procured here, of the other side of the lane, was to attack the body of guards. This deponent does further testify, that Porter sent to him on the Friday night, being the 21st of February, to meet him and others to consult and prepare every thing, in order for marching to the places where they were to quarter in Brentford, and about Turnham Green. The next day they having billeted every man's quarters, and that Porter had engaged the deponent about the middle of the week, to lie with him that night in some private place; but the deponent had business, and was from home on Friday night, but was sent for the next morning at 8 o'clock, by Porter, to desire him to come to his lodgings; where he the deponent went, and Porter told him all parties were ready to march in the afternoon, if the king went abroad, which they should know soon from their orderly men at Kensington, for that sir George had Durance for his orderly man there, and he and Chernock had Chambers for their orderly man, who had been there all the week. Soon after came into Porter's lodgings others of the party, as Cranburn, Pendergrass, Keys, and King, the latter of which just came from sir George with a message to Porter, and then Porter took a piece of paper, and wrote a list of his men, which was sent by Cranburn (who he called his quarter master) to Mr. Chernock, to send to order so many horses and arms to be ready for them; and when Cranburn came back, he told Porter, that Chambers, the orderly man, had sent word to Chernock, that the king was to go out a hunting between 10 and 11 o'clock, which Porter told us all, with a great deal of joy. Then Porter told the deponent, that Pendergrass was to be of the party of the eight that attacked the king's coach, and said aloud to Pendergrass, that he had a special piece for him that would carry eight balls; and King said, he hoped he would not fear breaking the windows; no, I'll have a finger in him, said Pendergrass. This deponent further declares, That Cranbourn brought the list back to porter and at the foot of Porter's list he saw the list of Chernock's men, both which made about 18; and this deponent told Porter, he thought he had more; to which he answered, that they had been disappointed of five or six; but

that they should make up 40 with sir George his party, which King said was enough of all conscience to do the business. But Porter asked this deponent, if he could not supply him with some trusty men; to which he answered it was too late, there was not time to get any; but because he should not mistrust his inclinations for the affair in hand, this deponent went out, and brought him one to the place where they dined, which was at the Blue Posts in Spring Garden, where about 11 or 12 o'clock they had notice that their orderly man Chambers was come back, and that the king did not go: And Keys, Porter's trumpet, came up soon after, and told the company that the party of guards was returned, and passed by foaming, and the king's coaches were returned, and that the people wondered that the king had missed going a hunting for two Saturdays together; which put a consternation in Porter and the rest of the company, who said there must be some treachery in it; therefore Porter resolved to go to Epsom or thereabouts, and asked the deponent if he would go with him; but he told him he had a suit in the commons, which was to be heard on Tuesday, therefore he took Pendergrass and his trumpet, to come up again the next day to give Chernock an account where to send to him in case there should be an occasion. The deponent further declares, that several disloyal and treasonable healths were drunk, as confusion to the king, &c. But one more particular was drunk, since they were frustrated of their design that day; Porter squeezed half an orange in this deponent's hand, and drank a bumper to the squeezing of the Rotten Orange, which went round. This deponent further deposes, that Porter tore the list of his names of his party and Chernock's, before he went out of town, and said they should find no names about him, and that he had got a great horseman's sword and a buff coat in a room ready to put on, when the orders arrived to mount; but when he went towards Epsom, his black carried them home. This deponent further declares that Porter told him, that there was about five regiments of horse and dragoons about England, and that sir William Perkins had acquainted him within this fortnight, that he had a commission for a regiment of horse which he was raising, and that he had bought thirty horses already, and that he was to assist the party that was to assassinate the king with some of his horses. This deponent asked Porter, if the three brothers Higgins's was of the party? he said no, but Tom Higgins liked the thing very well, till his brother Bevil dissuaded him from it, declaring it was an assassination; therefore neither of them would be concerned in it: but George, the elder, promised to buy two horses, and the others one a-piece. This deponent also asked Porter, whether Goodman was concerned in this business of murdering the king? because he was in the last year's design: he answered him, no, because he would not be contented without being made acquainted with

the whole scheme and design thereof, therefore they did not communicate it to him, not thinking him easy to comply with their method, but would be troublesome in opposing their project, to make them comply with his manner. This deponent also declares, that Porter told him, that king James was at the head of a good party of men upon the coast in France, ready to embark for England, and that the duke of Berwick had been here, but was gone back again. King also told this deponent, that the duke of Berwick was here, and he does believe he had the news from sir George Barclay; and when this deponent talked with Chernock about the 18th or 19th of this month, he asked him, how went on the affair in hand? But he found him very close, and answered, that he believed they had left off the thoughts of it, for some that were very sanguine and hot, were changed and grown very cold, but he found by Porter the same day, that they were as resolute as ever; but Chernock told this deponent, that the great affair, (meaning that of king James's making a descent in England) he might rely on would be very soon: he also remembers that Chernock told him that the other business, meaning that of murdering the king, he was apprehensive had taken air, and that the king was acquainted with it; his majesty not having been abroad a good while, and that an affair of such consequence had been communicated to too many, and that they had delayed the execution of it too long, both which was dangerous, and therefore he seemed to be off the design; which is all at present that occurs to the deponent's memory, save that the list which George Porter wrote of his men, which was sent by Cranburn to Chernock, and the list which Chernock wrote at the foot of the said Porter's list, which was mentioned before by this deponent, he, the deponent, took into his hand, and read the names, and several of the said persons in the said list, are as follows: Porter, Pendergrass, Brierly, Tucker, Keyes, Vicar, Toby, De la Rue, this dep., Lee, Bertrun, Salisbury, Chambers, Chernock, Douglas, the late lord Dundee's* chaplain. and says, that the said Porter told this deponent, on Saturday, the 22nd instant February, that he was disappointed of some of his men, for that one of them had broke his arm, and so his comrade would not come without him, and that two men that were recommended by major Lowick, and one of them, which he believes to be Bertrum, had told his wife, that Lowick was to mount him with horse and arms for the king's service, (meaning king James,) and that his wife followed him, crying and roaring to the coffee-house; whereupon one at the coffee-house went to a justice of peace and made affidavit of it, upon which warrants were

* The celebrated Graham of Claverhouse. See the different particulars concerning him in the Scots Cases, in the reign of king Charles 2. See also vol. 11, p. 310.

granted, and so we are disappointed of four or five, or words to that effect.

26 die Feb. 1695-6. FRANCIS DE LA RUE.

Dictus Franciscus de la Rue, jurat
coram me GULIELMO TRUMBULL.

LA RUE's Paper, March 17, 1695.

PAPER THE FIFTH.

In the year 1693, in the month of June or July, col. Parker, captain Porter and myself went in the dusk of the evening to Mr. Goodman's house, where we supped, and Chernock was in the company: after supper they consulted how to make an insurrection with the troops they had ready; which was to be by joining their several little parties of horse, that were in readiness at several places in the country, and then to march to their general place of rendezvous, to join their Northern friends: and in order to do this, they that had their parties in London, as I understood Porter and Goodman had, Parker advised that they should take a house or two a little way out of town, about Barnet, where there should be stabling or a barn large enough to hold fifty or sixty horses, where some of their parties in London were to repair to quarter at, the night before they were to march forward to join the other parties above-mentioned; and Parker told me, he would form me a troop of what supernumerary men he should find, that were above the complement of any of the troops that they were to join, and Parker desired Porter and Chernock to forward the Higgens's; for I understood by them, that George Higgens, the elder brother, was to raise a troop himself, or with his brothers assistance, and they were to be his subaltern officers; and Porter was to raise a troop, and Goodman another, and Mr. Porter did take a house near Barnet, which is called the Blue-house; but I was at no more of their consultations concerning that affair, being obliged soon afterwards by my recognizance to appear at the assizes in Essex, in the month of July; where I was convicted of coming from France without leave, though I came to England with the lord Duresley's pass, his majesty's public minister at the Hague: notwithstanding which I suffered a whole year's imprisonment in Chelmsford gaol; and before the year was expired, colonel Parker was taken up, and sent to the Tower, from whence he escaped; therefore I have not seen him since July, 1693, nor been in any of their consultations about any insurrection; all which is truth to the best of my knowledge. In witness whereof, I subscribe my name this day, being the 17th of March, 1695-6.

FRANCIS DE LA RUE.

EXAMINATION of BERTRAM, the 3rd and 5th of March, 1695-6.

PAPER THE SIXTH.

Thomas Bertram being examined before a Committee of Lords on the 3d of Mar. 1695-6,

saith, That about the 8th or 9th of February last, Charnock invited this examinant to drink a glass of wine with him at his lodging, at Mrs. Conant's house in Norfolk-street; and when he came thither, Chernock took this examinant with him into his closet; and being there alone, Chernock asked this examinant if he would undertake a business that would answer his expectation. This examinant enquiring what it was, Chernock told him, it was to go out with some company he knew, to see if they could kill the king, or words to that effect.

This examinant saith, That he neither consented to the proposal, nor did he refuse it; but Chernock told him to be in the way, or if he went out, that he would leave word when he might be found.

They went then into another room, where was a good deal of company drinking wine; he remembers sir William Perkins and Chambers were there, and there were three other persons he did not know, and one Trevors he saw there, but he believes he knew nothing of the business.

This informant observed, That Chernock was often called out, and that many came to him, whom he discoursed with in private.

This informant met Chernock on Saturday the 22d of February at Lincoln's-inn-back-gate, at that time he was alarmed with warrants being out against this informant and some others; Chernock told this informant to come to him, within half an hour, for they had as good do the business for something, as to be chased about for nothing; and this informant understood by his discourse, he meant killing the king.

This informant saith further, That he was with major Loick on the 4th or 5th of February, and Loick asked him if he would go with him upon a business, without asking any questions, and this informant told him, he would.

This informant saith further, That he went to Loick's chamber on Friday the 14th of February, and Loick told him he must be ready against the next morning, and provide himself with boots and other necessaries, and gave him a guinea, and bid him meet him at the Purl-House in Hart-street, by six o'clock the next morning; and Loick told this informant, he believed they should attack the king, and that a horse should be provided for this informant.

This informant says, he did not meet Loick according to his appointment, it not being his intention to be concerned in the business; that he met Loick on Sunday the 16th of February, who checked him for his not coming to him the day before, and said, so it would have been if the king had been in the field; he thought he meant king James; this informant excused himself, upon his being watched by his wife that he could not stir out; and this informant had been told by Spencely a coffee-woman, that there were warrants against himself and some others.

This informant saith, he did ask Grymes whether he had a mind to a country journey, in company with 30 or 40 more; and that Grymes answered, he would go as far as this informant, and that he believed it was on account of the little man; but this informant told him he must ask no questions.

This informant says he knows Leigh.

This informant says he knows Durand, and that he was a very busy stirring man.

This informant says he knows Blaire, that he told him he was to be lieutenant-colonel to sir John Friend's regiment of horse, and that this informant should be lieutenant to his troop; he has told him so any time these two years; the last time Blair spoke to him about it, was six weeks ago.

A further INFORMATION of BERTRAM, on the 5th of March, 1695-6.

This informant saith further, That at the time of the La Hogue business, he was acquainted with Blaire, and he told this informant he was concerned with Mr. Holman, who lives in Lincoln's-inn-fields, about raising a regiment of horse for king James, and that Blaire had money from Holman, to defray charges.

This informant saith further, he hath known Chernock these seven years; that he knew him a lieutenant in Parker's regiment in Ireland, where this informant was a trooper: that he had not seen Chernock for five or six months before he invited him to his house on the 8th or 9th of February last, or thereabout: he then sent for him by Trevors, but that this informant had seen Chernock several times before, meeting him accidentally; and they always talked about king James, and what hopes there was of his coming. That this informant always found that Loick and Chernock had a confidence in him, and made no scruple of telling him any thing they knew.

THOMAS BERTRAM.

Jurat, March 5, 1695. Coram me,

JA. VERNON.

The EXAMINATION of BRICE BLAIR, of the Age of 54, taken the 9th of March, 1695.

PAPER THE SEVENTH.

This examinant saith, He was born in Scotland, and bred a Presbyterian; that at the age of 28 he went into Holland, and was there corporal of the gentlemen in captain Riddle's company; that he changed his religion while he was in Holland, and turned Roman Catholic; and after that he served in my lord Dubarton's regiment in France. He hath lived in England 21 years: his last commission was captain lieutenant in sir Edward Hales's regiment.

This informant says, he has known father Harrison, alias Johnson, these five years; that he was recommended to his acquaintance by sir Edward Hales,* that this examinant hath been

frequently with the said father Harrison in several places, particularly at Harrison's lodgings, at my lady Alibone's in Brownlow-street in Gray's-inn, and at father James's lodgings, in Somerset-house.

This examinant saith, That as long as he was acquainted with the said Harrison, he found that he was always a manager of king James's affairs here, and that he kept a correspondence with Milfort, while he was in favour, and since that with secretary Caryll: and this examinant hath seen several letters that the said Harrison had from both of them, part in cypher, and part at large. The said Harrison was the first man that employed this examinant to get all the men ready that he could against the la Hogue business; and at that time brought this examinant acquainted with colonel Parker: They met at Mr. Thornbury's house in Bedford-street, where Parker and Harrison then lodged together.

That some time after the beginning of February last, this examinant met father Harrison in Somerset-house, being appointed to meet him at six o'clock in the evening, but he don't remember the precise day. He asked this examinant, Whether he knew any soldiers or men of courage, for there might be something done within a little while, that might be an introduction to king James's restoration, or words to that effect. This examinant said, he knew a few such men; and this examinant asked, in what manner that business could be effected: after some pause, the said Harrison told this examinant, that if the French fleet could not come out time enough, the going out of the English fleet might be retarded by king James's friends burning the Victualling-office. This examinant replied, that was impracticable, or if it were to be done, there were few to be found that would run the risk: whereupon the said Harrison said to this examinant, That he would have him as forward in the king's service as any man, and that he was told by a gentleman, and a very good officer, that if he were sure of but a hundred good horse, he would end the war in a fortnight's time: To which this examinant replied, that the gentleman might know more than he, but that could not be done by a regular war, nor according to the rules of true honour or arms, but by some other means, which he was afraid to harbour in his thoughts. Father Harrison said no more, but shrunk up his shoulders, and he did not see him for some days after.

This examinant saith, he knows sir George Barclay very well, but hath not seen him since the Revolution. The first that told this examinant of his being in England, was sir John Friend, who told it him at Jonathan's coffee-house about a month ago, or more. Sir John Friend told this examinant, he had been to see sir George Barclay, and was going to him again that day.

Sir John Friend told this examinant, that sir George Barclay had not been long come over.

This examinant saith further, that he went

* See his Case in this Collection, vol. 11, p. 1166.

to father Harrison at Somerset-house, about the 20th of February in the evening: father Harrison then told this examinant of some warrants that were out against Bertram, Grymes, Lee, and another, whose name he don't remember; and the said Harrison added, that if that business miscarried, it would hinder king James from coming: he did not name what business he meant; but this examinant understood it, that it was either seizing or assassinating the king, he having heard from Fisher, that such a thing was in agitation, and being confirmed in it by what Harrison had said to him of the hundred, and burning the Victualling-office. This examinant thereupon told the said Harrison, they had brought their hogs to a fine market, for now they were all ruined. Hereupon the examinant blaming such a design, as having neither authority from God nor man, the said Harrison replied, There was an authority or warrant, and that he had seen it; and asked this examinant if he thought it fit that every body should see it, but he had seen the authority, and to the best of his remembrance, he said, it was from king James. This examinant says, his answer was, he did not think it was in his nature, meaning king James, and immediately after this examinant took his leave and came away.

This examinant says, he knows Chernock, but hath not seen him these two months; he always thought him a rash, hot and violent man, and did not care for him. Chernock owned to this examinant last summer, that he was newly come from France. This examinant saith, he hath known sir William Perkins above a year; that sir John Friend brought him into his acquaintance, and that they sometimes dined together; he found both Friend and Perkins great Melfordians.

This examinant saith, he told sir John Friend what Fisher had told him concerning the assassination; he said he had heard it, and was sorry for it; for he was afraid it would ruin king James's affairs, and all his friends. This discourse passed at Jonathan's Coffee-house, when this examinant called sir John Friend aside to another room.

At the same time of the la Hogue business, colonel Parker sent this examinant to Mr. Holman, to see what he would do for king James's service: the said Holman told this examinant, he had heard a good character of him from sir Edward Hales, and he would send captain Hastings to him; and Hastings came to this examinant, and brought him to Holman, who told him he would raise a regiment of horse if he could, and that he would act by his former commission; and he sent this examinant, Cole, Mitten, and Hastings, about for men, and gave this examinant 130*l.* towards his charges; and this examinant believes he had at that time engaged near 200 men; and this examinant was to command the men he brought in; he promised Bertram to be his lieutenant, who likewise engaged some men.

This examinant saith, That one Edmonds a

weaver in Bridgewater-Square, first brought this examinant into sir John Friend's acquaintance, about four years ago: that this examinant hath been very intimate with sir John Friend since that time. Father Harrison asking this examinant if he knew any rich citizens, that would be hearty in king James's service, this examinant named sir John Friend; and thereupon the said Harrison writ to Melford in sir John's favour, and he had a very favourable answer, and that king James was well satisfied that sir John Friend continued stedfast to him.

That this examinant could not induce sir John Friend to write into France; but he afterwards told him he had writ, and he supposes it was upon colonel Fountain's persuasion, with whom Ferguson brought him acquainted about three years ago. Sir John Friend told this examinant, that he had writ to king James, and had received a kind letter from him.

This examinant saith further, That sir John Friend told him, he had been often in company with the E— of A—, E— of L—, E— of Y—, and lord M—; and this examinant believes that colonel Fountain brought him into their acquaintance, for he verily believes he was not known to these persons till he knew Fountain.

This examinant says further, That about two years ago sir John Friend received a commission from king James for a regiment of horse; that the same commission was brought him by one Nicholas Pigott, a great acquaintance of Mr. Noseworthy's, who was used to go and come from France. This examinant saw the commission in sir John Friend's hands, it was upon paper printed, with a little seal in the margin, signed James R. and countersigned Melfort. That sir John Friend seemed to be well pleased with it, and told this examinant he should be his lieutenant colonel, and employed him to see if he could get men ready to mount against the time the king should land; and he hath given this examinant about 100*l.* to drink with the men and treat them.

Sir John Friend left it in a great measure to this examinant to find out men, who could bring in troopers ready mounted, either by their money or by their interest, or by both; and this examinant proposed Fisher to him, and Vernatti,* who undertook to raise each of them a troop. Sir John Friend chose Richardson, who is a merchant in the city, and sir John told this examinant he would raise a troop.

This examinant recommended Hall to be a captain, who is a merchant at Deal, at the desire of his brother in-law one Robinson, who lives likewise at Deal, and is concerned in

* "Feb. 9th, 1685-6. Mr. Philibert Vernatti having reversed his outlawry for the murder of sir Edmondbury Godfrey, came to his trial on the Indictment, and on one appearing against him he was acquitted for want of prosecution." Narcissus Luttrell's MS. "Brief Historical Relation."

weighing of wrecks. This Hall owned to this examinant, he had forty men ready that would mount themselves.

This examinant had engaged in words fifty or sixty men, for his troop, and Bertram was to be his lieutenant: some of the men said they had as much money as would buy a horse; some said they would borrow a horse; and some said they would go into the first stable and take a horse.

Some of the men this examinant had engaged were, John Reyner, a stocking-weaver in Pettycoat-lane. Knight, a hatter in Shoreditch. Cook, a watchmaker in Hackney. Buckle, a bit-maker at Charing-Cross. Wilson, a taylor of Shoreditch. Harris, clerk of the Stocks-market.

About six weeks ago, when the discourse began to be hot about setting out the Toulon fleet, sir John Friend told this examinant, he would not meddle with raising his regiment until he heard king James was landed.

Sir John Friend told this examinant formerly, that there were abundance of pretty brisk men would follow him from the City, and particularly from the Temple.

That this examinant proposed to Mr. Barnesly, who had been a lieutenant of horse in king James's time, in sir John Fenwick's regiment, to be major to sir John Friend: he now keeps a coffee-house over against Turn-Style in Holborn; he sometimes refused, and sometimes accepted.

Sir John Friend told this examinant some time since that sir John Fenwick had four troops in a readiness.

This examinant saith, That the design of the invasion was concealed from him as well as the assassination. That he did not expect there would be any rising in England, until the Toulon Fleet came about; and then he supposes all the Jacobites in England would have prepared themselves, and their general discourses were to that effect. **BRYCE BLAIR.**

Jurat, March 17, 1693.

Coram me, JA. VERNON.

BRYCE BLAIR'S INFORMATION, the 9th of March, 1695. Concerning the Assassination, or Seizing his Majesty's Person.

PAPER THE EIGHTH.

I went to see Mr. Harrison a little after sir George Barclay came from France, who told me, that there might be something done in a little time, which I forgot in my former deposition, and which might be an introduction to king James's restoration. I asked after what manner that business could be effected; and after some pause he told me, that if king James could not come time enough, his friends might burn the Navy Victualling-Office, wherein the provisions for the mouth lay, which might retard the English fleet from getting to sea for a considerable time. I told him, being amazed to hear such words proceed from a priest's

mouth, that it was not practicable, and if it were, there would be few found that would run the risque. He told me, that he would have me as forward in the king's service as any man, and that he was told by a gentleman, and a very good officer, that if he was but sure of a hundred horse, he would end the war in a fortnight's time. I answered, That the gentleman might know a great deal more than I, but that behoved to be done not by a regular war, nor according to the true laws of honour or arms, but by some other means, which I was afraid even to harbour in my thoughts. I saw Mr. Bertram once in the city, and if I am not mistaken, Mr. Fisher was in the house at the same time, and in the same room; he called me into the next room, and I asked him, before he could speak to me, if I am not mistaken, Why I did not see him of a long while, and that I was afraid he was upon some desperate design; he made me little or no answer, but wished he had seen me sooner, or words to that effect; and I begged of him for God's sake, if he were dipped, to fly and never be concerned further. This is what occurs to my memory concerning the assassination and invasion.

As to the seizing the Tower, I shall only add, that I have heard sir John Friend say, That upon an invasion, if ever the standing troops went out of the Tower, and the Hamlet militia were entrusted with the same, the veteran troops should hardly ever re-enter; and that he was as well assured of my lord Lucas's lieutenant colonel, as he was of any man in England.

I forgot to acquaint my lord chancellor and the secretary of state with one particular passage, and it was this: in a discourse betwixt Mr. Fisher and I, he was talking of sir Ralph Dutton, how discontented a man he was, and that he was a man of great following and interest in his country; and after a great deal of talk of this nature, I asked him if he thought he would accept of king James's commission? Mr. Fisher answered me readily, he did not doubt but he would. Whereupon I went to Mr. Harrison and acquainted him with the thing, who at first told me he doubted not but to obtain it, and thereupon wrote over to secretary Carroll, and had a promise of one, but never received any; but whether this was a real design in the knight and Fisher, or whether it was a trap for me, I leave it to the judgment of the king and his council.

As to colonel Holman, I cannot think of any thing at present, more than that major Mitten and captain Hastings, were concerned with the colonel as well as I.

As to what my lord chancellor did hint to me concerning my countrymen, and that I had not made any mention of them, I have ruminated upon it, and it just now comes fresh into my memory, that it can be no other than sir Andrew Forster, who did me the favour to give me a meeting a few days before this damned, hellish business broke out; he has been in town above this half year. I do not know the se-

crets of his heart, but on my conscience I believe the gentleman is here on no ill design, but only thrust from St. Germain's, either by a prevalent party, or his own pressing affairs, and slighted here by king James, and his greatest friends.

BRYCE BLAIR.

Jurat, March 17, 1695.

Coram me, JA. VERNON.

The INFORMATION of GEORGE HARRIS. March 28th, 1696.

PAPER THE NINTH.

(Copy.) This informant saith, That he was an ensign of foot under the late king James in Ireland; that he has served since in the second troop of his guards in France; that about the 14th of January last, N. S. King James sent for this informant and Hare his comrade; that king James spoke with him in the late queen's bed-chamber, and told this informant, that he had an opportunity of doing something for him, being very sensible he had served him well; that he would send him into England, where he should be subsisted, and that he was to follow sir George Barclay's orders, and in so doing, that he would take care of him: that he had ordered them money for their journey, which they should receive from Mr. Carroll (who is secretary to the late queen.) King James told this informant further, That he should find sir George Barclay every Monday and Thursday, between six and seven at night, in Covent-Garden-Square, and that they might know him by a white handkerchief hanging out of his coat pocket: king James pulling a list out of his pocket, told this informant, when he was in England he must go by the name of Jenkins, and Hare by the name of Guinney. Colonel Parker was by, all the time when king James spoke to this informant; and by the king's order colonel Parker went with this informant and his comrade to Mr. Carroll's; and Mr. Carroll told them, that the king had ordered them ten Louis d'Ors a-piece, which would be enough to carry them over; and if they should chance to be wind-bound, he had writ to the president Tosse at Calais, to furnish them with money for their subsistence; and accordingly they went to Calais, and staying there some time for a wind, their landlady was paid by the said president, who also sent captain Gill to them (who is master of a chaloupe, that is used to go to and fro for intelligence.) The wind coming fair, they embarked on board the said chaloupe, about nine in the morning, and sailed along the French coast down as low as Bologne, and about two in the afternoon, they stood directly for England, and about one o'clock next morning they landed in Kent, near the house of one Hunt. Captain Gill, with about fifteen of his men, went a-shore with them (leaving only two boys in the vessel;) they armed themselves like soldiers, each having his fire-lock and collar of bandileers; they were carried to Mr. Hunt's house, who provided them with horses: there was a person there in the same

house, who was going over for France; they did not see him, but Hunt carried some messages between them, about exchanging guineas for Louis d'Ors. They continued at Hunt's house until three in the morning; and as soon as the horses came, they mounted, and rid away to Teuker's house at Sandway-Lane, where they arrived about eight o'clock, and from thence they went, as they were directed, to Charles Cross's at Rochester: Berkenhead came to them at Teuker's house, and came to Rochester, where they arrived about seven next morning; and they came from thence together in the Gravesend-coach, and so took boat for London.

This informant says further, That the next night after they came to London, he and his comrade Hare went to look for sir George Barclay in Covent-Garden-Square, as they were directed, but missed of him, which they were surprised at. They lodged at the sign of the Unicorn in Brownlow-street near Drury-lane. This informant was only known there by the name by Jenkins, but his comrade being a man known to the landlord, went by his own name of Hare; and he going out the next day, lighted accidentally upon Berkenhead, who told him he had seen sir George Barclay, who desired they would meet him that night in Covent-Garden; and they went thither accordingly that night. It rained very hard, and one Handford came to them from sir George Barclay, to bring them to him under the Piazza, where they found sir George Barclay, major Holms, and Berkenhead: then sir George Barclay taking his leave of the others, took this informant and his comrade into the little Piazza, and after some enquiry after the king, queen, prince, and princess, he told them, they should take great care to keep within doors; that he had no money for them at present, but would send them some in two or three days; and sir George Barclay told this informant, that when there was any occasion, he would send for them by major Holms, and that they need not give themselves the trouble of meeting there any more, because it was suspicious.

Major Holms came to this informant, as sir George Barclay had said, and brought him two guineas for the subsistence of Mr. Hare and himself; and two or three days after, he came to their lodgings again, and gave them four guineas a-piece, which he told them, with the guinea they had already received, made up a month's pay, at five shillings a day, guineas then going at thirty shillings a-piece.

This informant says, That he and his comrade met one evening near the dial in Covent-Garden, with Mr. Holms, Mr. Cassel, Mr. Richardson, and Mr. Handford, alias Brown; that their discourse was of keeping themselves in their lodgings, and not stir out in the day-time.

The persons that this informant remembers have come out of France within three months are,

Sir George Barclay, who went from St. Ger-

mains in December last; it was then given out, that he was gone to Paris to be cured of a clap.

Major Holms, who this informant supposes came along with sir George Barclay, for he did not see him after sir George Barclay was said to be gone to Paris.

Cassels and Richardson went off next, the former giving out, that he would go for the Scotch College; and try something else, since the profession of a soldier was not more favourable to him; and richardson likewise declared, that he was now weary of the service: Cassels belonged to the first troop of guards commanded by the duke of Berwick, and Richardson to the second troop of guards commanded by the earl of Clancarty.

And when this informant and his comrade came away, (who were both of the second troop of guards commanded by the earl of Clancarty,) they also gave out they were weary of the service.

Captain Counter, who was lately made brigadier of the guards, came over after this informant.

Mr. Maxwell and Mr. Byerly came about the same time that Counter did. Mr. John Maxwell was in no post, but lived at St. Germain, and was nephew to brigadier Maxwell, who was killed at the battle of Marseille. Byerly came over to be major to a regiment that the king had given to Mr. Curwin; whereof Mr. Oldfield was to be lieutenant-colonel.

After these came over brigadier Rookwood, and Bernardi, which last was upon the list for lieutenant colonel's pay at 25 sols a day.

Mr. Hungate lived at Paris, and had an allowance; he was nephew to colonel Hungate, who was talked of to have a regiment of dragoons whenever the king should land.

Mr. Blackburne, a Lancashire gentleman, who came out of England last spring, and had 10*d.* a day allowed him at St. Germain.

There came over likewise Mr. Handford of the second troop of guards, who came over with Mr. Hungate.

There came over likewise Mr. Baily, and Mr. Thorold, but those two came over as men of service to be employed in colonel Curwin's regiment of horse, and to put it upon a good foot; Baily quitted the post of a lieutenant in the Grand Prior's regiment.

The rest were to be under sir George Barclay's command, and had false names given them to go by.

This informant says further, That on Saturday the assassination was designed (as he understood afterwards), he went to brigadier Rookwood's lodgings, and he had not been there long, before Bernardi came in; he found them in a hurry, and asked what it was they were going about; Mr. Rookwood told him, if he would go to Mr. Counter's, he would tell him; whereupon this informant went to Mr. Counter's lodgings, at a confectioner's over-against the Three-Tun-Tavern in Holborn, where he lay by the name of Rumsey: he

found him at home, and he told him he had orders for him from sir George Barclay; and that he and Mr. Hare must be ready instantly, and go to Turnham-Green at the sign of the Woolpack (as near as he can remember). There were then present major Holms, Mr. Knightly, and Mr. King. Major Holms told this informant, that his horse and Mr. Hare's stood at Somerset-House, and he told Knightly, that Mr. Hungate's horse stood there likewise; and Mr. Knightly spoke to this informant, to take care of Hungate's horse, since they stood all together, which he promised to do. Mr. Knightly said further, that he left his comrade at home, for fear of any orders coming to the lodging, that they might not be both out of the way together.

This informant says further, That sir George Barclay came in to them, and declared, that these were his janisaries, and that he hoped they would bring him the garter; and talked something of attacking; upon which this informant was very much startled, not knowing the thing: soon after, Durant came in, and told them the prince of Orange did not go out that day: however sir George Barclay bid major Holms deliver us our horses; and Mr. Knightly answered, It would be the best way, for if any accident happened that the horses should not come up, it would be imputed as a fault to the rider; and therefore it would be much better, that they should ride them out, and give them some exercise; and they might do it without suspicion, if they went one or two, and ride out at several parts of the town; and if they should chance to meet, they should take no notice one of another. Brigadier Rookwood, and major Lowick came at the same time, but they all dispersed soon after, and sir George Barclay, Counter, Rookwood and Holms went and dined together at the Black-Lion in Holborn.

This informant says further, That he, his comrade, Cassels, Richardson, Handford, Meldrum, and Maxwell, were at an ale-house in St. James's-street, in Covent-garden the night before, being the 14th of February, where Mr. Counter came to them, and delivered to each of them a case of pistols, the said Counter telling them they were not to stir out of their lodgings, but to be ready next morning.

This informant says further, That he and Mr. Hare met major Holms by his appointment the first Saturday at two o'clock in the afternoon, at the stables in Somerset-House, where they had each his horse delivered to them by the said Holms, and they carried them to a stable in Soho.

This informant says further, That either on Saturday night or the next morning, he saw captain Rookwood, and asked him whether they were to be the murderers of the prince of Orange, and that they had served to a fair purpose, to be sent over on such an account. Rookwood replied, That he was afraid they were engaged in it, but if he had known he had been sent over for that purpose, he would

have begged his majesty's pardon for not coming.

This informant says further, That another time walking in Red-Lion-Fields with major Lowick, major Bernardi, and captain Rookwood, they considering what a barbarous thing it was, Lowick said, he would obey orders and sure sir George Barclay would not undertake it without orders; captain Rookwood often repeated, that the king sent him to obey sir George Barclay's orders: Bernardi said the same, as also did the informant, and Lowick again said, he would obey.

This informant says further, That all the persons before-mentioned, except Byerly, Bailly, and Thorold, had horses and arms delivered them by sir George Barclay's order.

This informant says further, That he and Hare had several meetings with Richardson, Cassells, and others, but did not talk about the business till the Friday following; at which time this informant was at the Two Black-posts in Maiden-lane, where were likewise King, Richardson, Cassells, Maxwell, and Handford; captain Counter came to them thither, and told them, they must be in readiness the next morning, and not stir out; whereupon Cassells, swore, God damn him, he would have the plunder of the field, crying out, to-morrow is the day, boys! King said, if it did not do to-morrow, he would think of it no more. Handford asked, how they should make their escapes after it was done? Cassells replied, he must stay with that party he was ordered with. This informant then went to his lodgings to acquaint his comrade with the orders given them, and the next day, being Saturday, the 22d of February, about nine in the morning, major Holms came to them, and told them, they must be ready presently; and he bid this informant go to captain Counter for orders; and major Holms gave each of them a guinea, to pay for their horses. This informant then went to captain Counter, and found captain Rookwood with him. Counter told this informant, he was to be one of Rookwood's party; and Rookwood gave this informant a list of names, and said to him, laughing, he would make him his aid-de-camp: In that note were the names of this informant, Hare, Handford, and Blackburne, with captain Rookwood's name at the top; and captain Rookwood desired this informant to go and get those gentlemen ready; which he did accordingly; and then this informant coming again to captain Rookwood in Red-Lion-Square, to know what orders he had received from sir George Barclay, Rookwood told him, that sir George Barclay said the prince of Orange did not go out that day; and then he engaged this informant to dine with him, and Lowick and Bernardi, which he did at the Castle, a cook's-shop in Red-Lion-Square; where Mr. Lowick asked this informant, how he came to be in such a sweat? And this informant answering, That he had been to get some of captain Rookwood's party ready; Lowick replied, he had got two, which

were at a house hard by, and they could not go till he went to discharge them. Major Lowick said further, Gentlemen, you have 6s. a day allowed you, but I have not a farthing, and yet I bring three men upon my own charge. This informant saying, that was hard, and wondering that he did not speak to sir George Barclay about it; Lowick answered since sir George Barclay did not do it of himself, he would not trouble him. Major Lowick likewise told them that he had notice given him two or three days before, by one Harrison, not to go to his lodging, because there was an information given against him to the council-board about this business.

This informant says further, That he changed his lodgings that night, and went and lay with Mr. Rookwood and Bernardi, for two or three nights at their lodgings at Mr. Warne's, in Red-Lion-square; and after that Rookwood and Bernardi went to the other end of the town, near the Tower, where they were taken and put into the Compter; and this informant shifted from place to place till he found his name in a proclamation, and then he surrendered himself.

This informant says further, That the said Saturday night the plot was discovered, he was at the Bear-tavern with Rookwood, Knightly, King, Durant, and Boise, where they talked briefly of the assassination. Knightly went out, pretending he had business, and returned in half an hour, bringing Hungate with him; they whispered to Mr. King in his ear, whereupon King cried out, sure God Almighty is on our side. This informant asking what was the matter? they both answered, we must take care of ourselves; and that was the only time this informant saw Boise, since his coming into England.

This informant says further, That about the beginning of February, he met Maxwell and Cassells as he was passing over Covent-garden, that he embraced them, and they adjourned to Mr. Cassells' lodgings, where they found Richardson, and went to a tavern together, Mr. Hare being with them. Mr. Maxwell then told this informant, that captain Byerly was come, and desired to see him: Mr. Maxwell likewise acquainted the company, that notice being taken at St. Germain's, that so many of them were gone over, and it being wondered at what they were gone about, king James came to hear of it, and thereupon declared at his levee, that whoever should be found to make mention of any of those gentlemen, that were gone for England, or be inquisitive about them, that he should be severely punished, and never received into favour again.

This informant says further, That he went the next morning to Mr. Byerly's lodgings, at Mr. Ashwell's, in Drury-lane, and found him abed; and after he had saluted him, Mr. Byerly told this informant he was sorry he was provided for. This informant asked him, how? Mr. Byerly replied, that Mr. Parry had told him, at St. Germain's, that the king had put him, this informant, with sir George Barclay,

going on, that he had known this informant a long time, and it now lay in his power to serve him; that he designed to make him an aid-major, and lieutenant, and had certainly made it his business to speak to the king about it; but that Mr. Parry told him, the king would be very angry at it, since he, this informant, was already disposed of: major Byerly farther told this informant, that the king had given Mr. Curwin a regiment of twelve troops, and had made Mr. Oldfield lieutenant-colonel, and had given him a troop besides, and that his brother was likewise to be a captain there; and that he, the said Mr. Byerly, went by the sham name, Taylor, on this expedition, and that he was going into the North: his landlord, Mr. Ashwell, the coming into the room, he asked him whether he knew of any stables, for he was going out of town, and should return within three weeks and bring up some horses with him. Mr. Ashwell said, he would see about it. There was one Baily that came out of France, and was to have this informant's post of lieutenant, and aid-major in the regiment; and there was one Thorold likewise came over, who was to be lieutenant to major Byerly's own troop, and had undertaken to bring him eight men. Major Byerly further told this informant, that Mr. Oldfield, the lieutenant-colonel, and one captain Bell, were going with him into the North, and that Mr. Oldfield would bring up 3,000*l.* along with him to town.

Jurat 31 Mar. 16, 1696 GEORGE HARRIS.
Coram me Ja. Vernon.

EXAMINATION of KNIGHTLY, March 21, 1695.

PAPER THE TENTH.

(Copy.) About 9 weeks ago he saw sir George Barclay, first in Covent-garden-square in the dark by appointment; he said, he had done the business his master sent him about, but that he had something put into his head, by which he could do the king farther service, and asked him if he could get him half a dozen of honest fellows, and explained himself that he meant gentlemen.

This examinant undertook for himself and two more; viz. King and Durant: King sent Boyce to him on Thursday or Friday before the first Saturday.

He went to sir George at his lodgings over-against Gray's-Inn, near the sign of the Unicorn, a confectioner's, and told him of Boyce; and sir George liked him very well, and desired him to engage him, and present his service to him.

He met sir George Barclay several times, about three or four times at the Black-posts in Cockpit-alley. Major Holms was there, and Durant once.

By degrees sir George told what it was; the first was a general proposal, after that he said, that to facilitate the king's landing, it was to attack the prince of Orange at the head of his guards; he was not determined whether to do it on foot or horseback; he was of opinion for two days to do it on foot.

VOL. XII.

Porter sent him a message over-night to go out with him to Knight's-bridge; they met at the Rose-tavern, King, Porter, and he; to the best of his remembrance, it was on Wednesday or Thursday; King shewed them the place at Turnham-green that would be proper for the attack, then they went to Brentford, and King carried them by Sion to a ferry over against Richmond.

Captain King led them to a house between Richmond and Mortlack, where they said the king used to go, and shewed them a little wood within pales, and asked Knightly if it were not fit for an ambuscade: he said it was the fittest he ever saw; they took a slight view of it as they rode along, and then dined at Mortlack: they came that night to the Nag's-head; several others came to them there, viz. Sir George Barclay and Chernock, sir William Perkins came in there too. Sir George did not stay long, but then he said he resolved it should be on horseback. He has known sir William Perkins many years, but he don't know he was engaged in the business.

He saw sir George Barclay afterwards at his lodging, and he told him he was resolved to do it on Saturday; but upon a message brought by Durant, that the king did not go abroad, nothing was done that day; the same thing was carried on to the next Saturday. They used to go to see sir George Barclay once in two or three days. He saw there, Rookwood, Bernardi, Lowick, Hare, Harris and Counter, these three were of the guard in France; Hungate was there too, he was a gentleman who had lived at Paris.

Lowick told him he had engaged Bertram.

Bernardi was called major, he had seen him in Ireland; he supposes he was born in Holland or Flanders.

He was at sir George's the next Saturday. His horse was in Southwark; Durant took care of both their horses. His pistols were sent him by major Holms, or his relation; he lay then at Mrs. Wroth's, in Brownlow-street.

Major Lowick, Mr. Bauger, Mr. Holms, he, Durant, and two others, met at the Bull-head-tavern in Fleet-street; one of them was a young man related to Ernely; they talked of the Toulon-Fleet.

Langhorn served in the guards in France.

He met sir George on the 2d Sunday-night in Bloomsbury-square; also he said, he hoped we should see our master shortly.

He saw Counter on Monday, who told him, he would not see sir George that night, for he was taking measures to secure himself.

Sir George had another lodging in Southampton-buildings, over against the arch; he lay there by the name of Brown.

When they met in Southampton-buildings, he was to have met him at the Griffin-tavern.

Counter and Hungate were with him.

Counter went away with sir George; he went by the name of Romney or Rumsey.

Hungate went by the name of Rogers,

4 Q

Sir George Barclay lodged at first near the Red-lion in Drury-lane.

It is ten months since he came from St. Germain; the king told them, he could subsist there no longer.

He knew sir George abroad; and that king James had a great esteem for him.

Sir George told him he came over about ten days before he first saw him.

All he knew of the duke of Berwick's being in town, was by King, who had it from Porter.

He knew Chernock in Ireland, and had some general discourses with him.

Sir George said, that those who mounted his horses were to go and meet the king when he landed, and in the mean time they must shift for themselves, adding, that people were pretty well inclined; and at soon as that should be done, he hoped they would be of his opinion.

Sir George Barclay succeeded Sutherland.

He made himself very public towards the latter end; there were seven at a time at his lodgings on the last Saturday.

He saw Chernock in France when he past by, before the La Hogue business.

He told him of his being last in France; that he went on a message to king James, and that he came back in a month.

He was brought into it, before he was acquainted with the business, and being engaged he went on upon a punctilio of honour, not liking that no care was taken for a retreat.

Sir George told him they were to be forty six men; he relied upon sir George, that he had considered all things.

He understood by sir George, that the king would land soon.

Mr. GOODMAN'S INFORMATION, April 24, 1696.

PAPER THE ELEVENTH.

(Copy.)—About some two years since or better, I understood that colonel Parker was resident here, in order to engage several people for the service of king James; and captain Porter told me, he had a mind to see me, which he accordingly did, where he told me that there would be an invasion, and that king James would be restored; and that in order to it, he had a commission to levy men, and grant out subordinate commissions for a regiment of horse, and did ask if I would accept of one, which I accordingly did; he likewise said he would see me as often as he could, and that captain Porter and I should receive directions from time to time. Upon several meetings, and having received my commission, I understood what captains were to be in the regiment, which were, captain Porter, sir William Perkins, Mr. Chernock, sir Hugh Smithson, Mr. Higgins and myself, and one Mr. Widdrington, lieutenant colonel: The commissions were blank when they were delivered, and to be filled up by the captain, &c. I then came acquainted with Mr. Chernock and sir William Perkins, and by them and Parker, captain Porter and I was informed that there was a great body of

horse to be ready in the north, but though I asked, yet they never named any persons to me, but said it was sufficient; I should receive orders, and a route to march to a rendezvous upon occasion; and indeed I did not much press it, because I did gather there was a great many concerned; and at this time captain Porter and I took a house in the Chase, with stables and barns fit for holding horses, and as a fit place to meet upon orders given us to march, which we then daily expected.

Some time after this colonel Parker was taken, and being committed to the Tower, he made his escape; and after that I saw him, and then he told me he would be sure to correspond with me and Porter, and I should receive his letters of Mr. Chernock or Mr. Johnson; and he accordingly did; and in his letters he still gave us hopes, and said he would certainly send us notice to be in readiness, time enough for us to be serviceable to the design of the invasion.

The last letters I received from Parker gave me advice that he doubted not but the cause would come to a hearing at the Easter term, and he thought he should write no more, but bring the orders himself; upon which I went to Chernock, and he told me he did expect him here in a short time, but always or most commonly in his letters he told me for a sign, when the Toulon fleet should join the Brest fleet, I might certainly depend that we should be invaded here.

During these transactions, captain Porter complained that something he was sending to Lancashire had miscarried; he desired me to set by two boxes, which I looked not into, but supposed them to be arms, and I did set them by for him. I had not bought any arms, but had bespoke some of one Pesy, a gunsmith, who said I should have them ready at a week's warning.

After Parker's having made his escape, and getting into France, Mr. Chernock came to me, some time before the king's going to Flanders, and said, he had something to propose to me, and desired me to go along with him, which I did; and he brought me to one Mr. Waw, who said, he expected a commission from king James to seize king William; accordingly we went to the Chocolate-house in St. James's-street, and after some discourse about the commission he said he expected, we appointed another meeting at that place, and adjourned from thence to my house in Brownlow-street, where were present Mr. Chernock, Mr. Porter, Mr. Waw, major Mathews, and Mr. Donelagh; the subject of the discourse was about the surprising and seizing the king as he came from Richmond; and after several ways proposed for that purpose, I particularly asked, suppose that the king were in our power, what then? For we ought to have regard to some end or other in such an undertaking, for I was not willing to offer any thing to his person. Mr. Waw said, we might have a coach and carry him away; and he said,

he was assured of a fort to be delivered to him and put into his hands, (to the best of my remembrance it was Deal) which might give us shelter while we might find opportunity to carry him into France by shipping. I must confess I did see very little probability in what he said; neither did I believe that he would receive any such commission as he said he expected; (for about two years since, I remember I saw sir George Barclay with colonel Fountaine, and Mr. Porter; sir George was then going over to France, and it was the only time that ever I saw him; and then captain Porter and I did desire, that if king James desired any such thing as seizing of king William, he would send over a commission and a pardon withal, in case of an accident: Which message sir George carried over, and king James refused to send it.) However we had another meeting after that, at my house, by which time he said he would shew us the commission, and facilitate the design: It was at a house behind the Temple, where the aforesaid company met, and Mr. Waw brought with him one Mr. Hayes, who, he said, could furnish us with a ship which should be ready to transport us after we had seized the king; but upon discourse with Mr. Hayes, we found that the demands were so exorbitant, and not in possibility to be complied withal, and besides no order or commission being produced, we did desist then; for captain Porter, major Mathews, and I, did declare, we would not meddle without sight of the commission.

After this, captain Porter and I talked of hiring a vessel, and thought of sending La Rue and Chernock about it; we met at the Fountain by the Temple Gate, and sir William Perkins was there; and during the time of our being there, one called sir William out, and sir William called out Porter, who came in and said, there was a gentleman who could help us in this affair; who he was I know not, I believe captain Porter may, for I saw him not. But all this proved ineffectual, for the king went away suddenly, and no commission ever came; and by letters from Fountain from France, I understood king James was angry that they had used his name to what he had not promised; and Porter and I wrote over, by his order, the truth of the whole matter.

Some time after this, captain Porter, the e— of A—, and sir John Friend, sir William Perkins, and sir John Fenwick, and others, met about sending over some proposals to king James, to expedite an invasion; and likewise captain Porter said, it was proper I should be there, for he had engaged for me: I told him, I would come; and at the King's-head in Leadenhall-street, I found the persons above-named, together with my lord M—, and one Mr. Cook; the effect of their consultation was the sending Mr. Chernock with a message to this purpose, that if the king of France could spare such a number of foot, and so many dragoons, amounting to about 12 or 15,000, or thereabouts in all; that then upon notice given,

that every particular man there was to furnish such a number of horse, some more, some less, and be ready to succour the forces from France when landed; Mr. Chernock went and returned with a refusal, that forces could not be spared. Sir John Friend and my lord A— were of opinion, that if king James would venture hither only with some small retinue, he had friends enough to appear for him without any foreign forces; but that was held in doubt.

I used afterwards to see my lord A— I always asked what news he heard; he said when he received any orders I should know, for he having been in France (as he did not deny) I supposed him not to be ignorant of what was intended.

And to the better facilitating an invasion, sir John Fenwick used to send over a list of the forces, and how they were quartered, what were in garrison, and what otherways disposed of: He having made a mistake in the account, colonel Parker did by letter desire me to try if I could procure such an account, which I accordingly did of one Gisbon a clerk in the office, and sent it over frequently.

As to the escape of Parker out of the Tower, sir John Fenwick when I asked him how he got away, and how much money was given, he said 200*l.* promised, and 300*l.* given; for when a person came in, and told Parker he had brought him liberty, and was to have 200*l.* he replied you shall have 300*l.* and it was made good to him afterwards.

Much about the same time, I used now and then with captain Porter to be with sir John Fenwick, and it was agreed, that if colonel Parker should not bring us timely orders, that what forces we could bring, viz. Porter and I, we were to take orders from sir John Fenwick; this we offered him, and he kindly accepted; and he then said, that he believed that most of my lord Oxford's regiment would go to king James: when I told Mr. Paradise had promised to bring seven or eight to me, and that Mr. Aynsworth was to bring me twenty, and Parker had said, if I made thirty it was sufficient for me. As to keeping of horses sir John said it was dangerous, and they would be certainly seized, but the best way was to have a list of what horses were in and about London stables, and seize them upon occasion.

Captain Porter and I accordingly sent to view the stables; I sent Mr. Keylway, and captain Porter sent Cranburn, and they took an account.

CARDELL GOODMAN.

Jurat 24th April, 1696.

Coram me JA. VERNON.

Mr. SWEET's DEPOSITION, 18th March, 1695.

PAPER THE TWELFTH.

(Copy.) I have been conversant with sir William Perkins these three years, and have often been told by him, that king James would land in England, and that there was a party ready to appear for him as soon as he did so, but never received so much assurance of it, as

I have since Christmas last; for at, or since that time, he told me he had it from the king's own hand, that he would come, and therefore made preparations to meet him, for great things were expected of him by king James; he also told me he had bought thirty saddles, and other furniture; and that his own troop, as he called it, was composed of all old soldiers, and that he had several gentlemen that were good horse officers which ride volunteers with him.

About the beginning of January I was at his house, and he came from London with one captain Scudamore, and told me, he must be in Warwickshire the next day, and the day following at Leicester, to meet some of the king's friends: Some of them were to ride almost as many miles as he did. I met him at his return, when he told me, he had met the gentlemen, and all things went well, and that the West was as well inclined to king James's interest as the North. I told him, I knew most of the West country gentry, and asked him how they would meet, and if I could be serviceable in that, I would beg leave of the commissioners to see my friends, and then to talk with them, or carry any message to them; but he told me the correspondence was settled, and the place appointed, and that they were men of estates, and one of them a lord's brother.

About the 11th of February last, I received a letter from sir William Perkins, to come the next day to London, which I did, and met him in Norfolk street, desiring his commands, for I must home that night; He deferred telling me till he came back from meeting sir John in the city; when he did come, he told me, there was something he had designed I should have done, but on second thoughts, I was not a fit person, by reason of my family, but desired to call upon his lady, and order three of his strongest horses to be sent him the next day, by James, his groom. At my taking leave, he desired me to come up again the next Friday night, if he did not send me a line to the contrary. I received none, and did go to the same place, sir William not being within, there was Mr. Lea and Mr. Chambers to receive me: When he came in, he called me into his chamber, and asked me, if I had left my family in a good condition; I told him I could not get in my money, and they had but little; then he told me (in passion) I might have staid at home; I told him, I would be there to-morrow morning, but would call for his commands in the country, which I did; but he being gone out, left orders for me to stay till eleven of the clock. I then again met Mr. Chambers, and went to the Covent Garden Tavern, and drank a pint of sack together: he told me he had been at Kensington, and that king William did not hunt that day, saying, he kept as close as a fox in his hole, shewing me his wounds, and saying, I want to revenge these on the person that was the cause of giving them to me, telling me, when he received them, and how; we dined with sir William and Mr. Chernock; and then I went home, and do not remember that

I saw sir William from that time till the 20th, at Watford, and not since. Attested by

ABRAHAM SWETE.

Jurat 18th March, 1695.

Coram me Ja. VERNON.

JAMES HUNT's Information, 5th April, 1695.

PAPER THE THIRTEENTH.

(Copy.) This informant saith, he hath lived four years or upwards in the house where he now dwells in Rumney Marsh, which is about half a mile from the sea. That he hath been engaged in French correspondencies about three years. That at first it was only in the way of private trade. The first man that proposed it to him was captain William Berkenhead, who was brought to this informant by Thomas Gibbs of Smeed, who is since dead. What the said Berkenhead then proposed to this informant, was to send now and then a letter, and to receive some goods on shore, as also persons that came from France, as there should be occasion in the way of trade, which this informant consented to.

This informant saith, That either before that time, or soon after, sir Adam Blair and Berkenhead came to this informant's house as they landed coming from France, and he furnished them with horses to carry them towards London.

About that time there was one Simson Jones, who went by the name of Roberts, he brought over a great deal of goods from France, there were near eight horse loads of silks and laces; there has been at other times twenty or thirty horse loads of goods brought over.

Row of Dover was the factor for some of those goods, as also was Ricasse, and la Croix, the one of Sandwich, and the other of Dover. This informant has heard, that the goods were belonging to Moisy, Midy, Goudet, and other French merchants in London. He believes he has letters at home from Pigaut of Calais that are directed to some merchants to give them account of their goods; and this informant has delivered himself some goods to Midy, and received money of him for the carriage. Deharee, another French merchant, had five packets of silk in this informant's custody, which Berkenhead or his nephew carried up.

About half a year after that this informant was acquainted with Berkenhead, the said Berkenhead proposed to this informant the bringing or sending to London from time to time some packets of letters which he would pay for; and this informant did once or twice come up with packets directed to Berkenhead. This informant being unwilling to come up any more upon that account, after that, Berkenhead either came himself for the letters, or sent somebody. There was a young gentleman, a knight's son, as Berkenhead told this informant, who used to come frequently with the letters from London, and brought up those that came from France: He generally walked it backward and forward. That person has

been dead about two years, and Berkenhead has since employed his nephew for carrying letters, persons, and goods.

The letters that were brought to this informant, he buried till a boat came from France to fetch them; and he did the same with the letters that were brought over. This informant saith, That the letters came oftener from London, and in greater packets than those that came from France: The letters that went for France were at first made up like little packets of lace; the outside covers were generally directed to Pigaut, and the President at Calais; and the letters for England were under cover, to Berkenhead, and one Jackson, who, Berkenhead told this informant, was a priest.

One Thomas, a servant of Mr. Gumbleton of Sellinge, was employed by Berkenhead in carrying these letters.

The letters were brought from France, and sent thither by captain Gill, master of a French privateer, who sailed with about 20 men and boys, and had been concerned in this business as long as this informant; and the said Gill likewise brought and carried the passengers backwards and forwards. The said Gill came over very frequently of late, and brought several people.

The persons that this informant remembers to have gone backward and forward, since his being concerned, are as follows:

The e— of A—, who went over to France about three years ago. Berkenhead brought the said e— to this informant's house, where he staid near a week, waiting for a passage. Mr. Berkenhead, this informant thinks, staid all the time; and this informant and his wife eat sometimes with the said lord.

The e— of A— did not then own to this informant who he was; but when the boat came, and he went off, he told this informant he would be back again in 12 days, or thereabout; and he came over accordingly: he was a little indisposed when he came over, and staid five or six hours at this informant's house to refresh himself, and both this informant and his wife spoke with the said e— who told this informant, that he had been at St. Germain's, and had seen king James, and the queen, that he came immediately from Boulogne, where he was with the duke d'Aumont. Berkenhead told this informant afterward, that it was the e— of A—; whereupon this informant has been twice with the said e—, at his house in Leicester-fields, and he waited upon the said e— at Tunbridge the last summer, meeting him there accidentally. The said e— bid this informant come to him to his lodgings at Southborough, where he gave this informant a letter which he said was for the queen, and desired this informant to inclose it to Pigaut at Calais, and to desire him that he would direct to the queen; and this informant had a letter from Pigaut, acknowledging the receipt of the said letter, which he received from the said e— after St. James's tide.

This informant saith further, That the said

e— came down into Rumney-Marsh about June or July last, that Berkenhead was with him. They came to this informant's house, and enquired when he expected Gill over. They went that night to Harrison at Dimechurch, where the e— lay two or three nights. This informant was to see him there, and his wife saw him while the e— was at their house; but Gill not coming over in that time, the said e— returned again to London, and Berkenhead with him.

The lord G— went over about two years ago; Berkenhead brought him to this informant, and told him who he was; the said lord lay at this informant's two or three nights, and then went over with Gill.

One Mr. Viner went over near the same time; he was brought by Berkenhead, he staid some time in France, and came back the same way by the name of Maggot.

Sir James Montgomery, and sir Theophilus Oglethorpe went over together; they lay at Mr. Gumbleton's, at Sellinge; they sent for this informant to come to them, in the name of Roberts, alias Simson Jones, and acquainting him with their business to go over.

This informant sent them word by his boy, when the boat was ready; and they went over accordingly, about a month or six weeks after sir Theophilus Oglethorpe returned from France; and this informant furnished him with a horse, to carry him part of his way to London.

The two soldiers went over some time after, that were assisting in sir James Montgomery's escape, as Berkenhead told this informant, who brought them down at several times, and lodged them at Harrison's at Dimechurch.

Goff and Belmere went over about a year and half ago. Berkenhead told this informant, that Goff was a priest. When they came back, they brought goods over, as this informant remembers, and Goff has had several parcels of goods come over since.

Sir Andrew Forrester, and his son, went over about a year ago, and they lay at Harrison's: sir Andrew returned about half a year since.

One Pigott, a squint-eyed man, came over about a year and half ago.

One Dr. Taylor, a doctor of divinity, went over about a year and half ago. This informant believes he is still in France; another gentleman went over with him, which this informant does not know.

Crossby went over for France since his trial, and Berkenhead brought him to this informant.

Sir George Barclay, and captain Williamson went over together about two years ago; they lay at Harrison's house.

This informant has not seen sir George Barclay till of late, that he came over some time in January last; then came over with him major Holms, who had passed several times before, when my lord Melford was secretary.

There came over several persons at that time, some before, and some after sir George Barclay: There was about sixteen or eighteen of them to the best of this informant's remem-

brance; but this informant doth not know the names of any of them, except colonel Parker, the lord Castlemain, and Mr. Brown.

This informant says, That about the beginning of February, there came over a tall young gentleman alone, who was particularly recommended to this informant by Pigaut. This informant furnished the said person with a horse, and young Berkenhead conducted him till he met with his uncle. The said person returned again within a week from London, and captain Berkenhead with him. They came into Tucker's at Sandway, while this informant and colonel Parker was there, who was newly come from France, and was going to London; but meeting with this person, he returned with him to the sea-side, and they both went over the same night, the boat having orders to attend every night till that gentleman came. And this informant, by what he has heard since, does believe the said person might be the duke of Berwick.

The earl of Clencarty and major-general Dorrington went over likewise with capt. Gill, when they escaped from the Tower, as did also colonel Parker, who were all brought down by Berkenhead.

Col. Fielding came over about a year ago.

Col. Fountain has gone over backward and forward several times, and hath brought goods.

Berkenhead has gone over himself several times.

Moysy and Bradshaw went away together after the riot at the Savoy.

An ancient gentlewoman went over about a year and half ago, she lay at Harrison's.

There was one Mrs. Elliot too that went over, who lay at Harrison's.

Colonel Parker's wife, and one Mrs. Mary, who was concerned in Crosby's business, went over; they also lay at Harrison's.

Mr. Noseworthy went for France about two months ago, he came from France some considerable time before.

JAMES HUNT.

Jurat, April 5, 1696.

Coram me, J. VERNON.

JAMES HUNT'S INFORMATION, concerning Captain Berkenhead.

PAPER THE FOURTEENTH.

(Copy.) This informant saith, That it is about three years he hath been concerned with captain William Berkenhead; that the first time he came to his house, it was with sir Adam Blaire, and he told him he came from France.

Some little time after that, he came to this informant with Thomas Gibbs; and then Berkenhead proposed to this informant to be concerned in sending letters and goods to France, and in receiving them from thence; which this informant consented to, and hath carried on that business ever since, by order of the said Berkenhead. This informant hath received letters from France, that were directed to Berkenhead, under the names of West, East,

South, Fish, and some other names; and the letters were either delivered to him, or sent to him by his order, till February last.

This informant hath likewise received letters from the said Berkenhead, or by his order, which were sent to France: some of these letters were directed by the name of North, which Berkenhead told this informant were for the lord Melfort: some of the letters were directed to Mr. Scot, a merchant, and those were for the president at Calais; some for Abra. Stock, merchant; and those were for Pigaut of Calais, as Berkenhead told this informant. These letters were sent backward and forward; sometimes once a week, sometimes every fortnight, and sometimes longer, as it might happen.

This informant saith further, That he hath received several parcels of goods from France, that were on Berkenhead's account, and he either received them from this informant or sent for them, in order to their being carried to London.

This informant saith further, That the persons he remembers Berkenhead brought to him in order for their going for France, were first the e— of A—, who went over about three years ago, and Berkenhead brought him, who brought the said e— likewise a second time the last summer, but he did not then go for France.

Berkenhead brought to this informant the lord G—, who went for France, as also Mr. Viner. The said Berkenhead brought one of sir James Montgomery's centinels, and sent the other.

He brought sir Andrew Forrester, and his son, about a year ago; and one Dr. Taylor was brought or sent by Berkenhead, as also Crossby.

He either brought or sent sir George Barclay, and captain Williamson, who went for France about two years ago.

Berkenhead brought or sent major Holms several times, about two years ago.

When colonel Parker, lord Clencarty, and major Dorrington escaped from the Tower, Berkenhead brought them down when they went for France.

Berkenhead conducted colonel Feilding when he went to France, and either brought or sent Moysy and Bradshaw.

Berkenhead brought Mrs. Elliot, and the old lady that was with her was brought by his order.

Berkenhead brought Mrs. Parker, and Mrs. Mary that went for France; he likewise brought or sent Mr. Noseworthy, who went lately over.

Berkenhead brought the tall young gentleman from London, in February last, when they met colonel Parker at Tucker's, and went away together for France; and several others have been brought down to go for France; and others coming over from France, having been carried up to London by Berkenhead, or his order, whose names the informant doth not know, or not remember.

This informant saith further, That Berkenhead went for France immediately after the queen's death, and carried over the news of it; he was absent about a month, and this informant saw him at his return; he went and came in Gill's boat. He told this informant, that he had been at St. Germain's, that he had seen the king, the queen, and the prince; and that he had been ill upon the road.

This informant saith further, That Berkenhead went for France about December last, and this informant saw him when he came back again. To the best of this informant's remembrance, some persons came over with Berkenhead, and he believes sir George Barclay and major Holms were the persons that came with him.

This informant saith further, That Berkenhead went another time into France, besides what has been already mentioned, but he don't remember when it was.

This informant saith further, That a little after the discovery of the Plot, Berkenhead went to Deal, to take an account of the ships that were there, which he sent for France, there being a boat then come over; and he likewise sent at the same time a printed list of the names that were afterwards in the proclamation, which list he had from this informant, who received it from London.

Jurat, April 22, 1696. JAMES HUNT.

Coram me, JA. VERNON.

The DEPOSITION of JAMES EWBANKS.

PAPER THE FIFTEENTH.

(Copy.) This deponent says, he has served sir William Perkins as a groom about a year; he was never with sir William Perkins upon any country journey but once, and that was in January last; they set out from sir William's house at Bushy on a Thursday, and lay that night at Stony-Stratford, and the next day they came to Leicester, and staid there till Sunday morning; there were two persons that met him there, one, as he remembers, was called captain Yarborough, son of sir Thomas Yarborough; the other was a parson, but he don't remember to have heard his name. One captain Scudamore went with his master to Leicester.

This deponent saith, that captain Yarborough's boy told him that the parson and his master were come from as far as York: the next day being Saturday, his master, captain Scudamore, and captain Yarborough, and the parson, were above stairs together, and several persons came in and out to them, but he does not know who they were.

Sir William came from Leicester on Sunday morning with captain Scudamore; and the other two went away about the same time, and his master was at home again at Bushy on Monday night.

That on St. Valentine's day last, the 14th of February, this deponent came from Bushy to London, by his master's orders, and brought

three horses, which he set up at the George Inn in Holborn; his master had been in London some time before.

As soon as this deponent had set up his horses, he went to his master's lodgings at Mrs. Carrant's in Norfolk-street; he once talked of going out of town that day, but afterwards he told him he would not go till next morning, and that he should get the horses ready.

This deponent came to his master about seven on Saturday morning, and he bid him saddle the horses, for he intended to go home that day. This deponent came to his master again about eleven the same morning, and he gave him leave to go see a friend, and bid him be back at four o'clock, for that he would go home; but he did not go till Monday, and then Mr. Holms went with him. His master came up again from Bushy the Friday following, the 21st of February, and came up then with four horses; Abraham, another of sir William's servants, riding up one: when they came to the George inn, his master bid him get his own pad, and another horse which was as easy as that, ready by the next morning five o'clock, for two gentlemen would then come to ride out: and the horses were accordingly provided, one being his master's pad, and the other he hired of the ostler. His master sent this deponent a note that night to direct him to go very early next morning to Kensington, and enquire for Mr. Brown, belonging to the king's confectionary or kitchen, as well as he can remember, who lodged within a door or two of the way that turns up to the king's house; and he was to tell the said Brown, that he was sir William Perkins's servant, and came from the gentleman that lodged at the confectioner's over against Grays-Inn.

This deponent was accordingly at Kensington about eight in the morning, and spoke with the said Brown, who bid him put his horse up at the Red-Lion, and he would come to him; and the said Brown followed him immediately to the inn, and bid him tell the gentleman, he had nothing to send: but he took this deponent's almanack, and writ down in it, that he would be in town himself within two hours. This Brown was a thin man, between thirty and forty years old.

This deponent went immediately from Kensington to the confectioner's, and spoke with the gentleman who lodged there, he thinks his name was Rogers, he spoke broad Scotch, was an elderly man, with a reddish face, big nose, and wide mouth: this deponent shewed the gentleman what was writ in his almanack, and he tore it out. From thence this deponent went to his master at his lodgings in Norfolk-street: he told his master what message he had brought from Kensington, and that he had carried it to the confectioner's. His master asked what the gentleman said; and this deponent told him, he presented his service to him, and if he wanted him, he would be at home.

Upon which his master said, it was very well,

and bid him go to the inn, and stay there till he sent for him.

When this deponent came back to the inn, he found that the two gentlemen who were to ride out the horses, were come to the inn, who accordingly rid out, and returned again in two or three hours time.

This deponent says, his master sent for him about three or four o'clock in the afternoon, and sent him back to Bushy with his fellow-servant and three of the horses: but his master's pad was to be left in town; and he gave no directions when this deponent should come to him again; and he has not seen his master since.

This deponent says, that to each of the horses they brought up, there was a case of pistols.

There were three other horses at the George inn, which sir William Perkins told this deponent were belonging to some friends of his, and bid him when he was there take care they had their meat.

When sir William Perkins came to town at St. Valentine-Tide, he gave this deponent from his lodgings two saddles to carry up to the inn for two of those horses, which he bid this deponent take care of.

This deponent says, that sir William Perkins came to the George-inn on Saturday the 22nd of February about twelve o'clock, and Mr. Lewis came with him. Sir William Perkins asked this deponent whether he had any more than a couple of saddles, and he saying he had not: then sir William told Mr. Lewis, he had had but twenty-two saddles; upon which Mr. Lewis answered, there must be a mistake then, and he would see how it was, and go to the places where he had bought them.

On Monday the 24th of February this deponent received a letter from his master, directing him to carry a letter to Richard Evans his coachman in Warwickshire, by which he was ordered to dispose of the goods he knew of, to lett the grounds, and sell the two mares. This deponent delivered the said letter to Richard, who thereupon fetched the boxes from Mr. Hayward's, which this deponent and the said Richard carried thither about Michaelmas last; and when the said boxes were brought from Mr. Hayward's this deponent and the said Richard buried them in sir William Perkins's orchard. This deponent has heard since, that those boxes were filled with arms, but he did not know it before, for his master had bid Richard take care of them, as Richard's goods. And further this deponent says not.

JAMES EWEANKES.

Jurat, March 23, 1695.

Coram me, JA. VERNON.

The INFORMATION of JONAS CHAMBERLIN, taken upon oath the 27th March, 1696.

PAPER THE SIXTEENTH.

(Copy.) The examinant saith, he is coachman to my lord Feversham: that Mr. Lewis,

his gentleman of the horse, came to this informant some days before the Plot was discovered, and asked if he knew where any horses were to be hired for some gentlemen to go fifteen or sixteen miles out of town; and the informant directed him to Mascall, who lived in the same yard, where Mr. Lewis hired two horses the next morning; but an hour after, or some short time, he sent the postilion to let Mascall know that he should not use them; and afterwards Mr. Lewis sent the informant to pay Mascall, as he did, and to take back the half guinea.

The examinant saith, That about the same time six horses were brought into my lady Arlington's stables, with a note to the informant to take care of them, together with the postilion and helper. The same evening, or the next morning, Mr. Lewis came himself, and desired the informant and postilion to take care of the said horses, and that they should have something for their pains. The informant asked Mr. Lewis whose horses they were, and he answered, a friend of his, and they would not stay above a night or two.

The examinant saith, that two gentlemen whom he did not know, came twice to see the said horses, and there was a little man with them, who, as he supposes, was a servant: that two or three days after, the same little man came to the postilion and helper, and took out two of the horses, and brought them in again the same evening; the said little man gave six-pence to a boy to ride one of the horses, being unwilling to lead him.

The horses went out with holsters, saddles, but he does not remember he saw any pistols.

The said horses were there about ten days, except two or three, which were, within three days of their being brought in, carried to a stable Mr. Lewis had at St. James's, as the postilion told him, and where my lord Feversham's horses stand: that afterwards three of the horses were seized in my lady Arlington's stables by the king's officers.

This examinant saith, my lord Feversham keeps but two or three horses for his own use, and two or three horses for servants.

JONAS CHAMBERLIN.

Jurat, March 27, 1695.

Coram me, JA. VERNON.

The INFORMATION of JOHN ALLEN, taken upon Oath the 27th March, 1695.

PAPER THE SEVENTEENTH.

(Copy.) The informant is postilion to my lord Feversham: that about seven or eight days before the discovery of the Plot, Mr. Lewis hired two horses of Mascall, the informant being present, and Lewis gave Mascall half a guinea in earnest.

Mr. Lewis saw another horse in the farrier's stable in the same yard, but did not hire him.

The informant saith, That the same day Mr. Lewis hired the two horses of Mascall, he

sent the informant about eleven o'clock to tell him he should not use them.

The informant saith, That about eight or nine days before the Plot was discovered, six horses were brought to my lady Arlington's stables, and delivered to the informant, for the use of Mr. Lewis, who came himself the next morning to the stables, and bid the informant take care of them, and that he should have something for his pains. That the same evening these horses first came in, the informant and the helper went with two of the said horses to my lord Feversham's stable at St. James's, where he left them, and brought another back again; which he did by the order of Mr. Lewis, as it was delivered to him by one of the men that came in with the said horses. The same man brought in a seventh horse, and afterwards carried away three, so there remained only three in my lady Arlington's stables. Mr. Fosset an officer came to see them, and owned them to be his; but before this, there came two gentlemen to the stables to see the horses: they had a little black man with them who afterwards came and rid out two of the horses for several hours, and brought them again; he had the horses out by Mr. Lewis's order.

My lord Feversham keeps two grooms and four or five saddle-horses, and Mr. Lewis as many; he has known eight or nine saddle-horses in the stable at a time, some being my lord Feversham's horses, and the rest for the account of Mr. Lewis.

The examinant saith, that the three horses in my lady Arlington's stable were, after the Plot broke out, seized and carried away by the king's officers. Mark of JOHN + ALLEN.

Jurat, March 27, 1696.

Coram me, JA. VERNON.

INFORMATION of STEP. MASCALL, of whom Mr. Lewis hired two Horses, taken upon Oath, the 27th March, 1696.

PAPER THE EIGHTEENTH.

(Copy.) This informant saith, that he lived at the time of the discovery of the late horrid conspiracy in Somerset-House-Yard, kept a victualling-house, and likewise letts horses, and is since removed to the Strand.

That about nine or ten days before the said discovery, one Jonas, coachman to my lord Feversham, came to the examinant and told him my lord Feversham's gentleman Mr. Lewis, would hire two or three horses of him, if he had any; the examinant said he had; and the next morning, Mr. Lewis came to the examinant and hired two horses of him at eight shillings a-day for the two, during the time they were out, which, as near as the examinant can remember, was on Saturday morning. Mr. Lewis asked the examinant, what furniture he had for the said horses; and not liking it, and saying particularly he must have curb-bridles, undertook to provide furniture himself; and accordingly the examinant saw

VOL. XII,

two or three saddles with holsters and bridles, brought by a young lad into my lord Feversham's stables. Lewis, when he went away, left half a guinea in earnest with the examinant, and said he would presently send for the horses; but about two hours after, sent word that he should have no occasion for them; but this examinant said, he would be paid for the day; and Lewis sent him six shillings in silver, the half guinea being returned to him. The examinant asked Lewis when he hired the horses, whither they were to go? Lewis answered, they were for gentlemen to ride out. This examinant asked him how long his horses would be out; Lewis answered, he could not tell, it might be one day, two, or three.

The horses Lewis hired were about fourteen hands high. The examinant had a third horse, but Lewis did not like him, being too little.

The examinant heard that Mr. Lewis spake to John Chip, my lord Feversham's farrier, to hire more horses; and he saw Lewis look upon another horse that stood in Chip's stable.

The examinant saith, that a day or two before he saw six horses in my lord Feversham's stable, which he heard were newly bought in Smithfield; and my lord Feversham's coachman told the examinant these horses were to go out with his horses, but knew not whither: they imagined they might be for some muster.

The examinant saith, About a week after, Lewis, or some body from him, came to his daughter, and would have hired the two horses again; but when the examinant came home, he would not let him have them, having baffled him the time before. The examinant heard no more of him.

Mark of STEPHEN + MASCALL.

Jurat, March 27, 1696.

Coram me, JA. VERNON.

BRICE BLAIR, March 12, 1695.

PAPER THE NINETEENTH.

(Copy.) That he was sent into France about the time of the siege of Mons, and by sir John Cockram, to acquaint king James he could do him some service by his interest among the Presbyterians. That he had acquaintance with two leading men in the south of Scotland, in each of the fifteen counties and bailywicks, and could bring two leading ministers and two country-gentlemen in each, who would be active, at least passive: that he wanted money to go through the work. He told him he had received 15 or 1800*l.* at London, and that he had distributed it faithfully for the king's service: he thinks he said the money was sent for Buchan or Canon, who were then in the Highlands; but he had been persuaded to give 500*l.* to sir James Montgomery or his brother; he desired now 3,000*l.* for the king's service.

Ferguson told him two years ago, that he helped sir John Cockram to the above-mentioned 1,500*l.* or 1,800*l.*

When he came into France upon this message, he applied himself to sir Edward Hales,

4 R

and he delivered his message to king James, who bid him thank sir John Cockram for his fidelity, but the money could not be had: and king James gave him 20 Lewis d' ors for his journey, sir John Cockram told him, if he had bills for the money, he should put them into a tooth-pick-case, and thrust them up his fundament, in case of his being in danger to be taken.

Sir John Friend brought him acquainted with Ferguson, who was very great with him.

He heard Ferguson say, he thanked God he had grace and time to repent of the villanies he had committed against king Charles and king James: when the king heard it, the water stood in his eyes for joy. This was at Symond's tavern.

Vernatti gave him a couple of Ferguson's books, but he burnt them.

He heard Ferguson say, that he was engaged with sir John Friend, and was to go along with him; and sir John told him he would bring in a great many men.

He has been in company with sir John Friend, Ferguson, sir William Perkins, captain Ridley, who was formerly a sea-captain, Richardson, and Edmonds. BRICE BLAIR.

Jurat, March 17, 1695.

Coram me JA. VERNON.

BRICE BLAIR, March 13, 1696.

PAPER THE TWENTIETH.

Worthy Sir;

(Copy.) I expected more accommodation to write, or else I had begun sooner this day; for yesterday I was detained till ten o'clock at night in a crowd, before I could get to my lodgings, in a cold hole, without fire, table, or so much as a chair. I will begin where I left off at my last examination, and I have little more to speak of, but the arguments used by sir John Cockram, to induce king James to give him money to go through with the work; that if he did not give the Presbyterian party in Scotland full liberty of conscience, he would wade through a sea of blood to get thither; and desired king James to remember, that it was that party that cast the balance in the civil wars, when king Charles the first's forces had even quite beat the parliament's armies out of the field, and had drove most of them into their garrisons. King James told me, that he was always for liberty of conscience, and desired me to acquaint sir John, that he would let him have the same on the word of a king. This I thought fit to acquaint the council with, that such a leading man as sir John, who owes the late king James his life and estate, might be narrowly looked after upon any apprehensions of danger in that country. There and then began my misfortunes; for I have never had a comfortable or happy hour since, the late king giving me at that time a verbal order to head what men I could get in and about London, to mount upon any occasion for his service.

The winter after I came from France, as I remember, I came to be acquainted with sir John Friend, and after some considerable time and intimate acquaintance, I told him the whole business, and finding myself unable in the purse, I offered him the command, who by degrees accepted of the same, and was assisting to me in money, but sparingly. I can say but little more of him, having made an ample confession already; but that king James was very well pleased with my proceeding in the business, as I was informed by Mr. Harrison, who shewed me several letters both from my lord Melford, and afterwards from secretary Carroll, to that effect: and that sir John Friend did believe that sir John Fenwick would command the faction he engaged with, and that sir John Friend told me, which as I hope for mercy I had forgot till this morning, that my lord M——, and colonel Fountain were to be of the same party, if not regiment, which Fountain himself confessed to me afterward. As for sir John Fenwick, I never saw him but twice or three times in company with sir John Friend, and that was in Jonathan's coffee-house; the last time he did not come into the public room, but sent for sir John Friend out into another, where they staid together about half an hour, or thereabouts, and that was a few days before this horrid and bloody villany broke out.

Though I accumulate guilt upon guilt on myself, yet I shall be loth even for my own safety, that any man should speak more than myself, in what I know. I shall relate one passage, which has hitherto escaped my memory: I think it was about three years ago, I was walking up High Holborn, where one Mr. Gray, a non-sweater, was drinking with one, a new convert, a little man, who had been a fellow in one of the Universities, I think Oxford, but his name I cannot light on for my heart's blood. Mr. Gray called me in, desired me to sit down, and told me, that this honest gentleman, meaning the little man, would be glad to be acquainted with me, and that he had been a great sufferer for the good cause, as he termed it: to be short, our acquaintance is contracted, I met him several times afterwards, and at last he told me, that that unhappy man Mr. Chernock, desired to meet me where and when I would please to appoint him, where would be only major Lowick, Mr. Chernock himself, and Mr. Pendergrass, a very honest gentleman, though I did not know him. We met, and after some discourse they fell on that of seizing the king's person, and of carrying him to Deal, where Mr. Pendergrass told me, he had a friend, an officer of one of the forts there, if I am not mistaken, where there should be a boat ready to carry him over to France; that he would undertake it with twelve men well mounted and well armed; and that 2,000*l.* would be requisite to carry on the work: to which the little man answered, I know of one. I was struck with horror and amazement to think of the extravagancy of the thing, if there had been nothing else; and

finding Lowick to be of the same sentiments I was, I freely and briskly told the company, that if I had known the design they had, I would not have met them: that though it was but seizing the king's person, it was equally criminal as an assassination, for his person behoved to be in great danger as well as his liberty; and that I would never act any thing of that nature, but dissuade all mankind from all such desperate criminal attempts. Well then, says he, let there be no more of it, I have done, and in a little time after went away: whether it was this Mr. Pendergrass, or another, I cannot tell: but if it was he, he is a pretty tall black man, if I am not mistaken, and formerly belonged to the Temple. I was uneasy and came away with Lowick, where we walked by Middle-Row in Holbourn, for a considerable time, in the broad street, it being fair moonlight: I begged of him for God's sake, that he would never attempt any such thing, which would undoubtedly be his ruin, and that I might never hear any more of any thing of that nature; for it was misprision of treason even to hear and not reveal it, which I would not do, as I told him, because I did not doubt but that we had already crushed it to death, being but an embryo: he told me, he was clearly of my opinion, and would take my advice. But what infernal fury has inspired him since, I cannot tell; for Mr. Bertram told me, when I asked him whether Lowick was concerned or not, that he was very forward. This, I hope, will excuse me, though a criminal, in not revealing it, because I nipped it in the bud; for if I had not, the villainy at that time might have been attempted, if not perpetrated.

I never heard any more of that horrid concern till last year, Mr. Bertram came to give me a visit at my lodgings; and after we had set there a-while, when he was going away, I told him, I would go out and walk with him a little; and so we went and walked a-while in the Charter-house-yard; and after we had walked a-while, we sat down, and amongst some other discourse, he told me, that Mr. Chernock had engaged him with others to assassinate the king, and that the thing was to have been done last spring on the road, as he went to Flanders; and that it had been certainly attempted had they not received contrary orders from St. Germaines, the very day before the king was to go. I told him, that I thanked God that it had miscarried, and he more especially had reason so to do, in regard he was more nearly concerned, and that it had prevented a great deal of innocent blood to be shed on both sides; and begged of him for Christ his sake, never to think of any thing of that nature for the future, and that the blessing of God could not go along with such undertakings, or words to that effect. This he knows to be a truth, and this I believe he neither can, or will deny.

I promised to my lord keeper to give a more particular account of that which should have been my own troop, which I will not only do, but likewise an account of the whole regiment,

as near as I can: and first as to sir John Friend's own troop, one Eyans, who had formerly been a lieutenant, was to have been his captain-lieutenant, who was to have brought him in some men ready mounted from about Greenwich and other parts; but I believe he was to seek for his other officers, unless it was colonel Slaughter, who had been commissary-general of the musters to king James in Ireland, before his defeat of the Boyne, afterwards lieutenant-colonel to my lord Maccarty's regiment of foot. Sir John Friend told me, after he was acquainted with this gentleman, of whom he was very fond, that he would bring him ten horses unmounted, and that sir John had a good mind to make two lieutenant-colonels, whereof he was to be one, which I grumbled at; and when he found that, he told me, that colonel Slaughter should command the non-swearing parsons, whereof he believed he had a whole troop. I heard captain Ridly likewise say, that he could bring him in a troop; but I never heard it from sir John.

I am interrupted here by the master of the prison, desiring me to finish my confession by six o'clock at furthest; which is impossible for me to do, sir, in regard I began this day after twelve o'clock, being kept in a crowd yesterday all day, not having liberty to go to my sorry lodging until ten o'clock, at what time I wrote a letter to Mr. Gibbons, at a cold broken window, having neither seat to sit on, nor table to write on; so that I thought the best way was to send you what I have done at present, and to beg time and some better accommodation for the rest; for I have a great deal more to say, which I bring down to this present conspiracy, as far as I know, and no further. This, I hope, dear sir, will excuse me to the most honourable board: and so I am, worthy sir, your most affectionate and most faithful servant,

B. BLAIR.

From the Gatehouse, March 13th, 1695.

Jurat, March 17, 1695,

Coram me, JA. VERNON.

Mr. BLAIR, March 14, 1695.

PAPER THE TWENTY-FIRST.

Honoured Sir;

(Copy.) I left off, as I remember, near to where I spoke of colonel Slaughter, that he was to command the non-swearing clergy, because he was a minister's son himself; I shall now come to my own troop, that fool's paradise of mine, and tell you, that I omitted one Wrae, who keeps a tobacco and brandy-shop in Moorfields, and was to be my quarter-master, who promised to bring me in a considerable number, whereof a great many could mount themselves; for I did not trust myself to every individual person, but to those who I found to be men of the greatest acquaintance and influence amongst the Jacks: but all this was on king James's landing; and I write this more upon the account to let the king and government know his friends from his active enemies, than

for any other reason, I being but one witness against them. As to captain Fisher's troop, I leave that to his own relation, for he was to have been our eldest captain; and if his memory fail him, I will endeavour to refresh it, if required; only by the by, I have made both him and Bertram so sick of the villainy, that they were at that time ready to vomit it up, if they have not actually done it, for I hear they are both in custody. This I speak without reflection, for I have very great hopes that both those men wish me well; but if they have spoke more than the truth of me, God forgive them, for I heartily do. I must go back a little to my own troop. There is one Kelly at the Red-Lion in Smithfield, promised me 35 Irish men, all ready mounted, upon a descent; and there was one captain Kelly to have commanded them. There was one captain Hopkins and one Stringer promised to bring in a troop: I was promised by one Ricsone to bring in all or most of the jacobite bailiffs and their followers about town: I was promised likewise by one Jenines at the Three Crickets in Crooked-lane, 20 men ready mounted, and he was to be a lieutenant, having been a life-guard-man formerly, with several others, whom time will not permit me to mention at present, and which I shall do with all candour and truth, if commanded by the most honourable board.

Mr. Hall, alias Cole, told me, that one Mr. lieutenant Linn was to be his lieutenant; one Robin Ainsworth in Southwark his cornet, and Gillibrand his quarter master: But this puts me in mind of something of consequence; as Mr. Fisher and I were discoursing of going to France, for he pressed me very much last summer so to do, and that he could do king James considerable service by going thither, in which he knows I was very cool, for I had been there too much already. I enquired of this gentleman, Mr. Hall, which was the best, safest, and readiest way of going thither; and he told me, that after king James's own boat was discovered, or like to be discovered, if I remember aright, there was a French boat went and came frequently from Calais to Deal, in the dead time of the dark nights, with as much safety as to go from London to Gravesend.

There is one Mr. Pits a non-swearing parson, who since this revolution used sometimes to live at Norwich, and sometimes at London, with whom I contracted an intimate acquaintance ever since; soon after the business of La Hogue, he told me, That the city of Norwich was very loyal to king James, as he termed it: He is now gone to Long Melford, and practices physic there, by the name of Dr. Thompson; whilst in town here amongst other discourse he told me, That if he had his charges born and credentials from some persons of quality here, who were king James's friends, he could do him considerable service: and did give me the list of several considerable gentlemen, as well in the county of Suffolk, as Norfolk, who would, as he said, prove very zealous for king James's service, either in their

persons or purses, or both; and they are these,

* * * * *

* * * * *

a great knot of Jacobite gentry near to Lin, * * * * * a knot in or near Long Melford, a knot of Jacobite gentry near Bury. I should have forgot almost all their names, if I had not luckily taken their names in an old Almanack I had about me, and which I have kept still. A while after, this Wrae went into those parts with one Mr. Sincho, a hosier near to Aldgate, about business of trade, and I desired them to make particular enquiry of the truth of Mr. Pit's relation, as near as their own safeness would permit them. They met accidentally with one Dr. Buck of Ipswich, if I am not mistaken, who went with them to Norwich, where he made them acquainted with several of the Jacobites, particularly with my lord of Yarmouth's chaplain; who not only affirmed the truth of Mr. Pit's relation, but named forty gentlemen more, as they told me, not only in Norfolk and Suffolk, but likewise in Lincolnshire and the Isle of Ely; and Mr. Wrae told me upon his return, that he found a great many Jacobites wherever he travelled, and was informed by some of them, not only of the meaner but better sort of gentry. Upon which I went to Mr. Harrison, and told him the whole business, and that if he thought fit, I would undertake the business, having credentials for Mr. Pit and myself. I proposed the late bishop of Norwich, and he told me he would discourse him about him. The next time I saw him, he told me he had been with the bishop, and with my lord M—— but that the late bishop told him, That the E— of Y——, was the fittest man to treat with in that affair. Mr. Harrison told me, there would be no great matter done in that business, in regard that he thought there were men of quality in most counties to do for king James's interest; and that to his certain knowledge as to Suffolk, there was one there already, who was a soldier and had a commission from king James to raise a regiment of horse, as occasion should serve: So I laid aside all thoughts of the business more, till the last time he sent for me, and which was the last time I saw him, and then he told me, he had shewn the list to my lord Y——, that my lord Y—— knew all those honest gentlemen very well, and would be glad to see me sometime about Piget Ally in the evening, and named a house, but I protest before God I forgot: I told him, being glad to be gone, that I could not meet him at that place to morrow, being to bring captain Fisher the next day, which was on a Friday the week preceding the proclamation, to sir John Friend at his brew-house in the Minories; so that I could not conveniently wait on my lord till the Monday following, and that day I saw my name in the paper that came out. We missed of sir John Friend on the Friday, as Mr. Fisher well knows, whether he would have revealed any thing to us, I cannot tell.

As for that Mr. Picquet, I have seen him here at London about half a year after the revolution, in company of Mr. Noseworthy and sir Eneas M'Fearson, I saw him accidentally in the coach I was to go in from Paris to St. Germain. He asked me, If I would enquire for any person? To be short, he provided a lodging for me, and brought me to the sight of sir Edward Hales: He provided lodging for me at Paris after I left St. Germain; and if I be not mistaken, he told me it was by the king's orders; for he told me who sent me, and what my business was; he has been three times there and back again since. He is a man of very good sense, language and learning, and I believe he knows as much of king James's affairs, as any man of his quality and age in England; for he knows and is intimate with most of king James's friends here of any consideration, from the highest to the lowest; only sir John Friend has hated him of late, and for this reason; At the time of colonel Parker's escape out of the Tower, Mr. Harrison came to sir John, and importuned him to lend him 100*l.* to facilitate Parker's escape, for otherwise he told him it could not be effected, and promised him upon his honour, to see him repaid, but that qua. [sic in orig.] Priest, he could not give bond; but Mr. Picquet being to go over about that time, told him, that he would see him paid, and that when he returned, sir John's money should be returned to him. The money he received at St. Germain, but never paid sir John at his return; which if my memory fail me not, was about last Christmas was a year, except what I got of it. For I expending money on his account, was very needy, and begged sir John to help me to some, who absolutely refused me, unless I could get 20*l.* from Mr. Picquet, and he would allow it; which I got with a great deal of difficulty, and afterwards 20*l.* more, both which I had paid at seven or eight payments, by the means of Mr. Harrison and my importunity, occasioned by my wants.

Dear Sir, I am almost spent with grief, cold and want, for though I had money, yet I can get nothing to me, I have contracted a great cold, with a pain in my head and eyes, so that I write in a great deal of misery, when I am forced to keep down my head to my broken stool; it now begins to grow dark, especially in my apartment, and near the time I promised to finish my confession; if possible, I shall to-morrow, or when commanded, if God permit me life and health; and consider, Sir, that I am forced sometimes, to think an hour before I can write a line; so that I hope the most honourable board will pardon me. In the mean while, I am, Worthy Sir, your most faithful, and most humble servant,

BR. BLAIR.

From the Gate house, March, 1696.

Jurat 17 March 1696.

Coram me JA. VERNON.

BRICE BLAIR, 15 March, 1695.

PAPER THE TWENTY SECOND.

Honoured Sir;

(Copy.) After I had left Somerset-house, for I was glad to be gone, as I wrote to you before, having some apprehensions of danger to my own person, in those narrow and dark apartments of father James's; as I was going to my own lodgings, I begun to consider with amazement, what Mr. Harrison had told concerning king James's order, and what to do in the business, how to reveal it, and not be known, and that I might not come to be an evidence; at last I thought to do it by a letter, without a name, remembering the gun-powder-plot, how it came to be discovered, and for my own preservation in case of afterclaps, to have taken an exact copy of the letter, and to have preserved it carefully; would to God I had continued in that resolution, I might then have been happy, whereas now I am miserable, without God's mercy, and the king's. As to the order I desired Mr. Fisher, when I met him the next day, to make particular enquiry after it, which I thought might prove to my advantage, upon any future danger, which I then plainly did foresee; and told him, now, dear Fisher, says I, if you should come to be examined upon this account, you will not deny, but I have had an abhorrence of this damned business all along: ay, that I will, says he again, readily, for I can do it with a good conscience, or words to that effect. This is truth. So help me God.

I came to be acquainted with captain Wallbank, by the means of Mr. Clark, the apothecary in Watling-street. I had seen him formerly at Mr. Barnesley's coffee-house, and at the Hole in the Wall in Baldwin's-gardens but never had any particular discourse with him, till such time as Mr. Clark told me, that the same Wallbank and captain Courteney desired to see me. I was not fond of their company, because Wallbank had the repute of an atheist, especially when in drink: I thought it but common civility to give him a meeting, which I did; I found him all in the air, Wallbank I mean, for the other spoke never a word that I could lay hold on, and I take him to be a close-thinking man; as for the other, he was all in the clouds, telling, that there were a great many gentlemen, in the countries where he had been, would take arms for king James upon occasion. Then they begun to hard drinking. I was uneasy, pretended earnest business to be gone, and so left them; but there was not one word of either assassinating, or seizing the king, as I hope for salvation and mercy; only I answered to one, who asked me, but I cannot remember for my life who it was that asked me, if I thought Courteney and Wallbank were in that conspiracy; I told them, I knew not, but was afraid they were, in regard I had heard a whispering, that they were embarked with captain Stow.

This is, worthy sir, all I can say of the truth, and no more, nor no less. If my memory has

failed me in any material point, I shall candidly confess it if a truth, or constantly deny any thing laid to my charge that is false to my last breath : and whereas the honourable Mr. Secretary Trumball was pleased to say, that I could remember times and places of several years ago, but could not that of fresher date, and that therefore my confession was not candid ; but, sir, I could not forget the siege of Mons, so famous over all Christendom, and that a man might more easily remember that, than something done but last week, if I had not kept a constant journal, which I never thought on.

As phlebotomy is absolutely necessary in the politic, as the natural body, yet it is every honest man's policy, as well as goodness, to mix justice with mercy, and to pull out the lesser offenders from the greater criminals ; for which reason I humbly implore his majesty's mercy, and earnestly beg of the most honourable board to intercede for me ; and if I be so happy as to owe the king a life, I will most willingly spend the rest of my days in his service, and spend my best blood to preserve his sacred person in any eminent danger. It is my interest as well as duty and gratitude so to do, for I could never expect either mercy or favour from king James, if ever he should return ; and truly, sir, though I may not be credited, this bloody villainy has very much staggered me both in my former loyalty, that I thought once that in duty I owed him, as in my affection ; and I believe, that this bloody and barbarous villainy will gain thousands of jacobites to be the king's friends, who were formerly his mortal enemies. Whereof, by all that's good, I shall make one, and not only that, but gain him as many friends as possible I can, if it please God and the king, to pardon me, and I am sure I can do it with a great many, and even with those who dare defend his person and government with their swords in their hands.

Men, sir, who know my temper, will hardly be induced to believe, that I can be guilty of such a bloody and hellish crime ; men, I mean, sir, of all persuasions, as well Protestants as Papists, Williamites, and Jacobites, as in some measure will appear by a gentleman's discourse, who came to the hatch of the gate, to give me a visit ; for he was not permitted to enter, but stood at the hatch before the two turnkeys. That as to the assassination only, he believed me to have as great abhorrence as any man in the nation ; this was out of the mouth of not only a Protestant, but of a steady and zealous friend to the government, and one with whom I have had a great many debates, even to heat formerly.

And now, sir, I am not only innocent of the assassination, by what I have already declared, but likewise, I am also ignorant of this sudden invasion, king James's being at Calais, or Dunkirk ; but what was talked on a good while ago of Dubart's going to the Northwards with fourscore transport ships, as also the duke of Berwick's being in town, till such time as I did read it in the first paper ; I am ignorant, I say,

sir, or else let my soul never inherit the kingdom of heaven ; and this I write without any manner of equivocation, or mental reservation, for these are but lies, and God is the God of truth. It were a folly for me, even to madness, to devour an ox, and choak myself with the rump ; after I had thrown myself at the king's mercy, and had comfortable hopes given me to obtain his pardon, by a full, candid, and genuine confession : for I have declared but too much to take away my life besides, without his majesty's most gracious pardon, a great part of which, could never in human probability, have been proved against me : but when the most honourable board considers, which I humbly beg of them to do, for Christ's sake, how industriously the business was concealed from me, there will be no mystery in the thing.

And that it was carefully concealed from me, may evidently appear by captain Fisher's telling me, that sir George Barclay told him, that though I was a man of honour, as he termed it, and brave enough, yet I was timorous, and was positively enjoined, not to acquaint me with any thing that passed among them. This timorousness of mine was nothing else, but that they knew I abhorred their villainies, and were afraid I might have revealed them. This I'll take the blessed Sacrament on ; and if I should on that which is false, I should certainly be damned. This I hope Mr. Fisher will not deny, and if he does, he is the most perfidious wretch that ever God and nature framed.

I shall now come to close, sir, for God knows I am very ill and faint, and scarce able to write any more, and only acquaint you, that my information was true to the gentleman, who took me up, my lord Cuts's adjutant, for the same notice was given to Mr. Gibbons thereof, and to a third person also ; and though he was not taken, yet it was an evident demonstration of the sincerity of my intentions.—Worthy Sir, your most affectionate and most obedient servant,
BR. BLAIRE.

From the Gatehouse, Sunday,
about 5 of the clock in the
afternoon, March, 1696. Jurat,
17 March, 1695. Coram
me, JA. VERNON.

Mr. BLAIR'S INFORMATION of the 16th of March,
1695.

PAPER THE TWENTY-THIRD.

(Copy.) He saith, That towards the latter end of January last, as near as he can remember, he dined with sir John Friend, at the Castle Victualling-house, in the alley, on the west end of the Old Exchange in London, and captain Ridly was there. Captain Ridly told this examinant, That about ten days before, a Roman Catholic gentleman, whom he did not name, was sent over to king James, and that he believed he would bring over the last orders. Sir John Friend said, he knew of it, and that was all he heard him say. Ridly said, It was a gentleman of 60 years of age that went over, and that he was a very sensible man.

About a week after that meeting, this examinant met sir John Friend at Jonathan's coffee-house; and sir John Friend having an occasion of going to Holborn, took this examinant with him in his coach, as far as St. Martins-le-Grand; and while they were in the coach, sir John Friend talked to this examinant about the Toulon fleet's coming about, as also about his regiment; and he told this examinant, that it behoved them to be good husbands, for if the invasion, that was expected at the coming about of that fleet, should miscarry, he should not have money enough to carry on his trade; That he, sir John Friend, would only mount some poor officers, who could not mount themselves: That when the Toulon fleet should come about, he and a great many others would be taken up, if found, therefore he designed to abscond; but he, this examinant, might skulk about, and get men prepared as well as he could. This examinant answered, it would be impossible, for nobody then durst buy a pair of pistols; and sir John Friend added, that till the Brest and Toulon fleet were joined, he would not put his foot in the stirrup. He told this examinant further, That he had a great many back friends about him, but he believed it was through emulation, or envy; and that if he, this examinant, carried himself warily, he (sir John Friend) would be as good as his word to him, by which he understood he should not be put by being lieutenant-colonel to his regiment.

Bertram brought this examinant acquainted with Mr. Fisher three years ago, or more; he was very shy of him at first, and it was half a year before he disclosed himself to him; and it was half a year more before he brought him to sir John Friend: He don't know that Fisher has seen sir John Friend for near these two years past, but he came several times of late to this examinant, to bring him to sir John Friend, and a meeting was appointed on the Friday before the Proclamation came out, but they missed of one another.

This examinant saith further, That Bertram told him, that Chernock and Porter made themselves sure of a great many of the earl of Oxford's regiment. This examinant came accidentally into the company of one of them, whose name is Bale, an Irish man, and that was about the beginning of this winter. This examinant told him, by way of jest, that he heard there were a great many jacobites in that regiment: whose answer was, he believed a great many of the old men were jacobites in their hearts; but Bale by his discourse did not give him the least cause to suspect he was one. This examinant believes this Bale is of sir Francis Compton's troop.

This examinant saith, That about Christmas last was twelvemonth, Pigot came over from France, and he was then to have paid the 100*l.* that sir John Friend laid down for Parker's escape; either sir John Friend or Harrison, told this examinant, that Pigot had received at St. Germain's 80*l.* in money, and 20*l.* by a bill, which made up the 100*l.* that was to be paid to

sir John Friend about the spring following. Sir John Friend told this examinant, that he believed he was cheated by that rascal Pigot, and he knew not how to help himself, for he durst not ask him for the money.

This examinant saith further, that sir John Friend had furnished him with several small sums of money, at several times, to drink with those he had engaged into the regiment; and this examinant having spent more money on that account than ever he had received from sir John Friend, this examinant spoke to him, to the best of his remembrance, about May or June last, and told him, that he had beggared himself to do king James and him service. Sir John Friend's answer was, he would give him no more money out of his pocket, but if he could make interest with Mr. Harrison, who was obliged in honour to pay him the 100*l.* he would assign this examinant 20*l.* of it. Thereupon this examinant went the next day to Mr. Harrison, insisting to have an order for the payment of the money, either under sir John Friend's hand, or by word of mouth; but sir John Friend said, they should have nothing under his hand. This examinant brought them together, and in his hearing sir John Friend told Mr. Harrison, he was obliged in honour to see him paid his money; and if Mr. Harrison would advance 20*l.* to this examinant, he, sir John Friend, would allow it out of the money to be paid him by Pigot. Harrison answered, he was not worth the money, but he would use his utmost endeavours to procure it; and accordingly the said Harrison paid this examinant thirteen guineas and ten shillings in silver, which made up the 20*l.* and Harrison told this examinant he received the sum from Pigot.

A little after Michaelmas last, this examinant being ill, desired sir John Friend to come to him, who accordingly came, and a few days after he writ to him for some more money; sir John Friend appointed him to come the next day to Jonathan's Coffee-house; and after some huffs and checks, he told this examinant, if by Mr. Harrison's means he could get another 20*l.* from Pigot, on account of the 100*l.* he would grant it. This examinant acquainted Mr. Harrison therewith, who said he would speak to sir John Friend; and the next time this examinant saw Mr. Harrison, he told him sir John Friend had granted the order, and accordingly this examinant received 15*l.* of the said 20*l.* by the hands of Mr. Harrison, at several payments, and 5*l.* part of the said 20*l.* was paid to this examinant by Mr. Pigot at Jonathan's Coffee-house, sir John Friend being present.

This examinant saith, that Richardson, a merchant upon Tower-hill, was the most intimate with sir John Friend. This examinant has dined at the Old King's-head about three months ago with sir John Friend, sir William Perkins, Richardson and Chernock, but then there were only general discourses.

Jurat, Mar. 17, 1695. Coram me, J. VERNON.

Worthy Sir ;

(Copy.)—I received your's very ill, being a-bed ever since I saw you ; I asked captain Kelly, meeting him accidentally in the Minories, about three months ago, as I remember ; we went in and drank two pots of drink, and I proposed to him the command of his countrymen, and he said he would command them willingly. I had spoke several times of him to the other Kelly, but never to himself before that time. As for Stringer I spoke to him myself, and proposed Hopkins to be his captain,

with whom he was intimate ; but when I spoke to Hopkins myself, when he thought it time he would endeavour to do it, but he thought things were not ripe enough to that purpose : this was last summer, about the siege of Namur. As for Aynsworth, I spoke to him three years ago, but finding him engaged to Mr. Cole as cornet, I never spoke any thing to him since ; and this was about the time I brought Mr. Cole to sir John Friend. I am ready to faint. I am, your's till death,

March 17, 1696.

BR. BLAIR.

Proceedings between the KING and THOMAS KENDALL and RICHARD ROE, in the King's Bench, on an Habeas Corpus upon a Commitment for High Treason.*

ON Thursday, October the 31st, 1695, the prisoners being brought up into court on the Habeas Corpus, the keeper of Newgate, to whom the writ was directed, returned the cause of their detainer to be a warrant under the hand and seal of sir William Trumball, knight, one of his majesty's most honourable privy council, and principal secretary of state, directed to the keeper of Newgate, or his deputy, *prout sequitur*. 'These are in his majesty's name to authorize and require you, to receive into your custody the bodies of Thomas Kendall and Richard Roe, herewith sent you, they being charged with high treason, in being privy to, and assisting the escape of sir James Montgomery, out of the custody of William Sutton, one of his majesty's messengers in ordinary, and charged with high treason. You are to keep them in safe and close custody, until they shall be delivered by due course of law : And for so doing this shall be your warrant. Given at the court at Whitehall, the 24th day of October, 1695.'

Sir Bartholomew Shower moved that the return might be read, and then that it might be filed. And Mr. Attorney owning that he had been attended with a copy of it, and having nothing to say against it, the same was accordingly filed.

Then sir Bartholomew Shower took exceptions to the return.

Sir Bart. Shower. My lord, I am of counsel for these two prisoners ; and what we desire at present is only that they may be bailed, though perhaps we might press to have them discharged, and that upon good reason.

To induce your lordship to bail them, I must beg your lordship's pardon, and I hope Mr. Attorney will hold me excused, if I make a question whether the person committing hath any authority for such a purpose ; it is for my clients, who think themselves aggrieved by

this imprisonment ; and in truth they say, that they are somewhat hardly dealt withal in this case ; for the information against them is only for being privy to and assisting the escape of the centinels, who were privy to sir James Montgomery's escape : But this is fact, of which the court will not take notice, and therefore I shall confine myself to the return, as it appears before your lordship.

With submission I must insist upon it, that a secretary of state, *quatenus* secretary, cannot commit for treason or felony ; he is not an officer for such a purpose in common parlance. The word secretary, imports only a writer of letters or other escripts for a superior ; and as Spelman explains the word, this is the sense of it, with the addition of secrecy, of privacy ; and so is his glossary upon that word. He is not a privy counsellor *quatenus* a secretary, nor is he a justice ; and though perhaps in fact he may be in the commission, yet unless he hath taken the oath of that office upon a *dedimus*, he cannot act as such : And I have seen five or six privy counsellors at a time appearing at a sessions of the peace for this county, in the case of the duke of Bedford's power as *custos rotulorum*, to remove the clerk of the peace ; and when intimation was made to them of the justices oath, which they had not taken, they refused to vote, and did thereupon withdraw. Here sir William Trumball cannot be presumed or intended to be a justice of the peace, because the commitment by him is as secretary, and not as justice ; and so is the return : And upon the return, the authority by which he commits ought to appear, otherwise the return is vicious ; and here doth appear none but that of secretary. Now if the office of secretary doth not imply and carry in it a power of committing, then this commitment is erroneous.

Our constitution hath distributed the administration of justice, both in criminal and civil causes, into several courts, and hath appointed several officers for several purposes, some for criminal matters ; and in criminals some are

* See Holt, 144. Lord Raym. 65. Skyn. 596. Comb. 343. 1 Salk. 347. 5 Mod. 78. 12 Mod. 82.

to examine and commit, others to obey and carry, others to receive and keep; some to try and sentence, others to execute; each hath his proper province; And of those your lordship will take notice, as also of their several duties and powers, and so do our law books. But a secretary is a court officer of state, not relating to the administration of justice.

You take notice, as do our books, of headboroughs, constables, sheriffs, coroners, escheators, and the like: But neither Coke, Crompton, Fitzherbert, Smith, or any book which treats of the jurisdiction of courts, the pleas of the crown, or the officers of justice, do ever mention a secretary of state; his office rather relates to foreign negotiations than domestic; and if any home affairs fall under his cognizance, it is rather as an intelligencer, than with any relation to criminals, prisons, or gaolers, &c. In all the debates about the liberty of the subjects, and wrongful commitments, which were in parliament in 4 Car. 1, or 1628, and amongst all the precedents mentioned there upon each side, which are multitudes, there is none by a secretary: It is true, there are divers 'per mandatum dom' regis,' by warrant from the lords of the council. I have perused Dr. Franklin's Annals of king James the 1st, fol. 261, and Rushworth, vol. 1, 458, and can find none by a warrant from a secretary. I have read Coke's, Selden's, and Littleton's Arguments upon that subject, but see nothing of a secretary's commitment. And it seems very strange, if such a power were lodged in this state officer, that there should be no precedents for it in those times, when extrajudicial and general warrants were so frequent, that they became a grievance to the people, and such a one as laid the foundation for the Petition of Rights.

I shall not controvert the power of the council at present, because it doth not concern the present question: all that I can observe in the case is, that it first began to be practised in sir Lionel Jenkyns's time; and yet even in 1678, when the Popish plot had increased the number of prisoners to a wonderful degree, it is notoriously known, that the chief justice Scroggs was frequently and often sent for to Whitehall to examine, and commit, and grant warrants. And some time since, the secretaries of state have thrown that burden off from themselves upon their secretaries under them, who have been sworn justices of the peace; and Mr. Bridgeman hath accordingly executed the office of a justice of peace at Whitehall, and that frequently. It hath been a question, whether a chancellor or keeper of the great seal can commit? And the better opinion hath been, that he cannot: and it seems to be agreed by Glanvill's and other cases in Moore's Reports, 839, &c. that his commitment is illegal, unless for a cause within his jurisdiction, as a court of equity; and the matters must so appear. I must agree, that any man may apprehend another for felony or treason; but there is a vast difference between an arresting

of a traitor or felon upon suspicion or knowledge, and a formal commitment to prison, with a charge of treason. And I am sure Mr. Attorney-General will not insist upon this reason; for then the consequence will be, that any man may commit as well as a secretary: and I suppose that doctrine will scarce be allowed, though I think that any man may as well as he. The reason of an apprehension upon suspicion, or hue and cry, or the like, is not to detain, but to carry to a constable or justice, as in 3 Inst. 52. Then here the gaoler doth not return that he detains him because he is guilty or suspected, but because by virtue of a warrant he is committed to his custody.

Besides, the reason of our law is against it; for a secretary cannot administer an oath. Now the law requires, that no man should be committed by an extrajudicial warrant, unless upon oath. If there be but a suspicion, there ought to be oath of the cause of that suspicion; for the person committing cannot commit upon another's suspicion, unless there be oath of some reasonable cause for it. He cannot take bail for any person accused, he cannot take a recognizance to prosecute: and I may very well challenge any man living to shew me any one recognizance ever returned into any court, that was taken by a secretary, either for appearance of a criminal, or for the prosecution of one: and the practice is always otherwise; for they have often taken bonds to the king, with condition to appear here. And your lordship and the court hath often had much trouble in that matter; for though they were bound to appear here, the court hath refused to record their appearance, because no recognizance returned or taken, whereupon to found such an appearance.

Now it seems strange, nay absurd, that our constitution, which we admire for its wisdom, should appoint an officer who should commit, and yet cannot give an oath whercon to found a commitment, that cannot bail, that cannot take any recognizance to prosecute: this is to make the liberty of the subject very precarious, notwithstanding the many laws and sayings of judges in favour of it.

A secretary is not obliged within the statutes that require justices to return the informations and examinations of the persons accused, and witnesses; which is a method prescribed by the wisdom of our ancestors, both for the service of our king and the subject; and may upon several occasions prove useful to each.

This I may say, that Mr. Secretary Coventry did scruple it; and upon good advice, even from sir William Jones, he took the oath of a justice of peace. Now, my lord, I think that those exceptions to this power of a secretary may very well be thought to render it so far a doubtful question, as to induce Mr. Attorney not to oppose our being bailed, to avoid any further mention of this or any other question.

But supposing that a secretary can commit, yet in this case the parties ought to be bailed according to the Habeas Corpus act [31 Car.

2, cap. 2, § 7.] ; for the act commands, that they shall be forthwith bailed, unless they be committed for treason or felony, specially mentioned and expressed in the warrant ; and if it be specially expressed, then upon prayer, if not indicted, they are to be bailed the last day, &c. Now here the commitment of a person charged with treason, if it goes no further, then unquestionably the parties ought to be admitted to bail, because that the high-treason is not specially expressed ; so a commitment for felony generally would bring a man within the benefit of the act to be bailed, because the species of the felony is not expressed. This is plain, and cannot be denied. Then I must further argue, that if the facts mentioned after the word high-treason be not, or cannot be treason, it must be allowed to me, that it is the same as if it had been for high-treason generally, and without more words : for if there be not a species of treason expressed, then we are still admissible to bail ; this must be acknowledged.

Now that the subsequent matter expressed after the word Treason is not any species of treason, I shall endeavour to make out thus : a being privy to, and assisting the escape of sir James Montgomery out of the custody of a messenger, and charged with high-treason, is not any species of treason, it is not treason.

First, I may with a great deal of colour make a question, Whether the rescuing or helping the escape of one in custody for treason, be treason, or only felony ? If the latter, then the commitment is erroneous.

At the common law, the helping any prisoner to escape was felony, and so is, 2 Inst. 589. Now the law in this respect is not altered otherwise than by 1 Edw. 2, *de frangentibus prisonam*, and that statute was rather to make it less penal than more ; and if to promote the escape of one imprisoned for treason, was at the common law but felony, then this statute seems not to make it a greater offence ; for it is in the negative, that none shall undergo judgment of life or member for the breaking of prison, unless the cause for which the imprisonment was, did require such a judgment, if the party were convicted.

The lord Hale, in his Pleas of the Crown, saith, that breach of prison turns into felony only, though the party were committed for treason ; though in another place he seems to be of another opinion. Now my argument to make this a doubt is this : by 2 Hen. 6, cap. ult. to break prison when committed for treason, is declared to be treason ; which would be needless, if it had been treason before. By 25 Edw. 3, nothing is to be treason, but what is there declared to be such ; and by 1 Mar. all treasons and declarations of treasons made by any act of parliament since 25 Edw. 3, are repealed. So that by this way of arguing, such escape was only felony.

There is one case, viz. Beusted's, 16 Car. 1, Jones Rep. 415, upon an insurrection in Surrey, where it is held, that if a man be committed for

treason, and another breaks the prison, and by that means the traitor escapes, this was treason in the rescuer, and there was one accordingly indicted and arraigned ; but I find that he was acquitted ; and though the books say it was for want of full evidence, yet it is more than probable, that it was the best ingredient in his case, that the judges doubted what offence it was, whether treason or felony. Now that case is founded upon Stamford's Pleas of the Crown, 32, and all that is in Stamford is a quotation of a case in the year book, viz. in 1 Hen. 6, 5. That the escape of a traitor imprisoned was held treason : but there it is put with a *quod nota*, as a strange thing, and some call it petit treason : but however, it was a strange thing, since we find in 2 Hen. 6, an act of parliament made to declare it treason ; which is improbable that such a law should be made, if the judges had the year before justly condemned the poor rescuer. So that either they doubted the law of that case, or that case had some other ingredient in it than the book informs us of.

This is not for receiving, aiding, and comforting a traitor, knowing him to be such, as was the case of Abingdon, who aided Henry Garnet, the superior of the Jesuits, in 3 Inst. 138, but this is only for assisting the escape : but supposing that such an assistance to escape, or rescue of one committed for treason, were treason, and not felony, yet in this case, as this warrant is, it is neither felony nor treason ; for,

Secondly, Here is no legal commitment of sir James Montgomery ; and consequently the helping him to escape is not treason. My lord Coke 3 Inst. 70, on 1 Edw. 2, says, That a voluntary escape of a prisoner can be no felony, unless the prisoner be under lawful custody by a lawful warrant expressing the offence. Now there can be no pretence, but that the same rule must hold in case of a traitor's escape, as to the warrant of commitment, and lawfulness of custody, as doth in case of felony. Now if the party commanded to receive, or the party to whose custody he is committed, were no lawful officer, then such custody cannot make the rescuer guilty of any capital offence. Co. 2 Inst. 550, saith, That false imprisonment is not within the law in this case ; now there can be no lawful warrant in this case, because the officer was not a lawful one. This is not the case of one carrying to prison, for then it would have been so expressed ; but here it is under the custody of a messenger, and charged with treason, which supposes it a custody with a charge by way of commitment. Then my lord Coke explains what is a lawful warrant, and that is two-fold ; either when the offence appeareth by matter of record, as a *Capias* upon an indictment, inquisition, or presentment ; or when it doth not appear so, but only upon oath, that a felony is committed, and the party is committed for the same to gaol. And he tells us, That there is a great diversity between them ; for in the first, the breaking of prison is felony, though there were none com-

mitted: but in the other case, where there is no record of an accusation to found a commitment on, if there be no felony committed by him who is committed to prison for a supposed felony, the breach of prison is no felony. Now this makes another good exception to the return, that here doth not appear, that there was either an indictment or appeal, or that there was a felony or treason committed; and one of them is necessary.

There must be a felony done at the time of the commitment; for a relation, which is a fiction in law, shall never make a third person a felon; as Plowd. 401. If there be a stroke or wound one day, and death ensues upon another day, this is murder in the party from the first stroke; but the rescuing of such a criminal before the death is no felony; which further shews, that a felony done is necessary to make the escape a capital offence.

In 2 Inst. 591. Coke saith two or three times in four pages, That the weight of the business depends upon the lawfulness of the warrant, or *Mittimus*; and he saith, that it must be in writing, in the name, and under the seal of him that makes the same, expressing his place, office, and authority, by force whereof he makes the *Mittimus* as is to be directed to the gaoler; and it must contain the cause more especially, and with more certainty, than a writ of *Capias* need to do, because the latter is founded upon a record, unto which a resort may be had. Then he saith, That if a warrant be not lawful it is no felony in the gaoler to suffer him to escape. Now here, we say, it doth not appear what the warrant was, upon which sir James was in custody; and a messenger is not a lawful gaoler; he is merely a conveyancer of a message, notice, or summons; and the practice of making their several houses prisons is but of late date; our law-books do take no notice of him as any legal officer.

Gaolers have fees, are subject to prosecutions for extortion; a messenger is not within the laws concerning it; for he cannot take fees *Colore Officii*, who hath no office; he is, at most, but a gentleman porter. I have often heard this method of commitments to the custody of messengers severely censured; and though any man may be ordered to carry another to a prison, yet he cannot therefore become a gaoler to detain him, as some messengers have done, for nine or eleven months, or more. How long sir James was in custody, I cannot tell; but surely the law which requires commitments to the county gaols, is sufficient evidence of the insufficiency of a messenger's power to detain; and if he could not legally detain, the consequence must be, that the escape or rescue is no treason.

Besides, here it doth not appear, that sir James was in custody for treason; it is said, that he was in custody, and charged with treason: the last might be upon accusation by oath, or by an indictment, and yet not charged in custody with treason.

Then it is not said with what treason sir

James was charged; it might be for such a treason, wherein the receiving or helping to escape was not treason; and it might be for treason generally, and then sir James was bailable; and it will be hard to exclude the rescuer from bail, when the person rescued might challenge it.

Then further, though the warrant be lawful, and in particular for felony, and the gaoler do willingly suffer him to escape, yet till the prisoner is attainted, the gaoler shall not answer to the escape, though the prisoner be indicted; and there is a very good reason assigned for it, because the felony of the prisoner shall not be tried between the king and the gaoler, for that he is a stranger to it. Now a rescuer or assistant of an escape is the same with a gaoler in this case, and shall not be in a worse condition. It is true, the party himself, if he breaks prison, may be indicted for the escape before he be tried for the felony: now the reason of this holds for our being bailed, for that it is impossible that we can be tried in this case, because sir James Montgomery is dead, and was never attainted, or so much as indicted. Lord Hale agrees with this too, that if the prisoner break prison, he may be arraigned of it before he be convict of the first felony; but the gaoler permitting a voluntary escape, shall not be arraigned till the prisoner be first attainted; for if the prisoner be acquit, the gaoler is dispunishable as to any capital offence, or if the prisoner die before attainder, the rescuer shall only be fined and imprisoned.

Now supposing the assisting the escape of one committed for treason, as some books seem to say, shall make the rescuer partake of the same crime, for which the party rescued was committed; yet if a secretary cannot commit, or if a messenger's house be not a lawful prison,* or if sir James Montgomery's offence be not specially enough expressed, or if by reason of his death the escape be only finable, then these prisoners ought to be bailed.

Mr. *Att. General*, (Sir Tho. Trevor) *à contra*, said, that they ought not to be bailed, because committed for treason specially expressed; that harbouring a traitor, knowing him to be such, was treason; that there were no accessories, but all principals in treason; that rescuing him was a comforting of him; that to rescue a felon, was felony; to rescue a traitor, was treason; that a messenger was a lawful officer, and that any man might imprison a traitor; that sir James Montgomery's death was matter of evidence upon the trial; that they need not set forth a treason committed, or an attainder, though perhaps it would be necessary to prove it when the prisoners came to be tried; that the power of a secretary to commit had been settled (but he could not say when); that there were many precedents, which he doubted not to produce, and therefore prayed time to look into it.

* See Proceedings against bishop Atterbury, A. D. 1723.

Mr. *Solicitor* (Sir J. Hawles,) spoke much to the same effect, with this further, that the prisoner's counsel admitted, that the privy council might commit, and a secretary of state was much more antient; that as to the messenger, a gaoler *de facto* was within the law; that those persons were wrong doers, and that they could not take advantage of their own wrong; and therefore the insufficiency of sir James Montgomery's commitment was not material; and that this warrant need not be so certain and special as an indictment, which must have time and place; and that if commitments be good in substance, the same was enough; and therefore prayed that they might be remanded.

Sir *Bartholomew Shower* replied, That the commitment of a secretary was never yet allowed; that the same was always complained of; that though it were treason to rescue one committed for treason, yet here it did not appear to be so; that though in trespasses a man cannot take advantage of his own wrong, yet that was not the question; because if sir James was not legally in custody, then this fact was not treason; that the insufficiency of his commitment was an advantage allowable, especially *in favorem vite*; that though sir James's death did not appear upon the return, yet it was a reason to induce the court to bail, since they might bail in cases of high treason specially expressed; and if the court were informed that they could not be tried, it would be hard to detain them in custody.

Lord Chief Justice *Holt*. How were the commitments at common law before justices of peace were instituted? It is true, my lord Coke saith, that none could be imprisoned till indictment; but that deserves consideration. If you were to enquire, and search in the Tower, undoubtedly you will find commitments there by secretaries of state; look into the Resolutions in Anderson.

Mr. Justice *Rokeby*. I can see no reason upon the whole matter, why they should not be bailed; but since Mr. Attorney is not prepared, and has had so little notice, it is fit he should have time. [Accordingly Wednesday next was appointed.]

Then sir Bartholomew Shower moved, that they might have their wives and friends, and a solicitor come to them, for that hitherto they had been kept close prisoners. [Which was granted accordingly.]

Upon Wednesday the 6th of November the prisoners were brought up by rule of court; and sir Bartholomew Shower moved again, that they might be bailed, and that if Mr. Attorney thought fit to oppose it, he prayed to be further heard, for that he had more matter to alledge to justify the former exceptions to the return.

Then Mr. Attorney, and Mr. Solicitor, and sir William Williams came into court.

Lord Chief Justice. Mr. Attorney, here are

Kendall and Roe brought up by rule, and their counsel desire to know whether you oppose their being bailed; for if you do, they desire to be further heard to the return; you had best consider of it.

Attorney General. I should not have so much opposed it, but that several questions have been made and argued here at the bar; as, that a secretary hath not power to commit, that this escape is not treason, that a messenger is not a legal officer; and since these things have been started, I must insist upon it that this is a good return, and that they ought to be remanded.

L. C. J. Then we must hear them again.

Sir B. Shower. My lord, we do with submission insist upon it, as I did the other day, that a secretary is not such an officer, as hath a power of committing for felony or treason: I have further looked into it, and do find somewhat in the books concerning it, more than the king's counsel did last time urge, but not enough to warrant such a power in the office of a secretary, and a great deal more against it. What I find I shall offer to your lordship's consideration, as it appears upon the words of the books; and submit it to your judgment.

My lord, I have perused the resolutions of the judges in 34 Eliz. 1, Anderson 297, 298, and I must own that it is there said, that one or more of the lords of the council may commit; how far that is law, I shall endeavour to examine presently: But now I have named it, I would beg your lordship to observe another of those resolves: though it would be more proper anon, yet I will just mention it here, and that is, that there is a resolution which condemns this return, it destroys a power of a messenger's office, and, if it be law, my clients ought to be bailed; it complains that divers persons were against law committed to prison in private places, and not to any common or ordinary prisons, or lawful officers, as the sheriff, or other person lawfully authorized to have or keep a gaol; so that upon complaint made, the queen's courts could not learn to whom to direct her majesty's writs, and by this means justice could not be done. Now this seems directly calculated for the 42 domestic prisoners, at the pleasure of the messengers; and if Mr. Attorney will allow these resolutions to be of any authority in one part, he must agree it to be the same in the others.

But I shall not need it in respect of the messengers franchises, and therefore shall offer some things to your consideration against those Resolutions.

In the first place, they are extrajudicial, and not the opinion of judges upon their oaths in any matter before them; and I am sure my lord Coke did refuse to subscribe his opinion upon such occasions. They are such opinions, as the judges may and often have varied from, when the point hath come judicially in question before them. Several of the judges did so

in the case of the ship money; and if they were not binding to the judges who gave the opinions, much less can they be binding to their successors, as legal resolutions; and if they be law, yet they do not relate to the office of secretary, but only to that of a privy counsellor. Now we do, without any disrespect to authority, for our clients, insist upon it, that that resolution is not law, that one single privy counsellor may commit for treason.

In the first place, what is there said, can never be reconciled to the rules of law, that persons committed by them ought not to be delivered; for those general commitments were illegal at common law; and so it is affirmed in the *Petition of Right*; and very great opinions have been, that there is nothing in the *Habeas Corpus* act, but the penalties and times, that was not common law, and that it is affirmative in substance of the antient law of this realm, which makes that resolution to be suspicious; for if what is affirmed by it in express terms (*viz.* 'That such persons as they shall commit, ought not to be delivered') be not law, then what is implied, that one privy counsellor may commit, is more doubtful still.

I shall not inquire into the occasion of those Resolutions, nor meddle with what our histories tell us of that time, and the then jealousies between some great men; but as I said before, those are not judicial opinions, but only a written certificate delivered to the then chancellor and treasurer: Besides, there is not one objection, which can be made against the power of a secretary in this matter, but stands as firm and forcible against that of one lord of the council; we find no authority for him to administer an oath or take a recognizance, and there is no precedent of either. And, as I said the other day, it looks absurd, that a single person should be an officer to commit, and yet cannot do that which is necessary in order to it, he ought to have a power to examine, and that upon oath: and if upon examination of witnesses it appears that the party deserves not to be committed, he ought to have power to take bail, as also a recognizance to prosecute. A justice of peace is finable by the justices of Oyer and Terminer, and gaol delivery, if he misbehave himself, or be guilty of a wilful irregularity therein; but it will scarce be said, that a lord of the council is in those circumstances. My lord Coke saith, that a lord of the council is made by summons and taking the oath, and that continues during the king's life: It is true he may be discharged, and generally it is by forbearing to summon him; suppose then it be omitted, and afterward he is summoned again, doth he take a new oath? When doth this authority begin? How doth it continue or end? Our law books take no notice of it.

Then, further, the king himself cannot arrest a man for treason or felony, nor can he command one in his presence to be arrested for felony or treason; so said sir John Markham to

Edw. 4, and 2 Inst. 186. *per mandat del Roy* is by writ, or by order or rule of some court of justice; now what judge is a lord of the council? He is to advise the king, and is sworn to it, and to withstand all traitors, and to discover all traitorous conspiracies, and so is every subject by his oath of allegiance, but the oath of a privy counsellor contains nothing relating to commitments.

At common law, extrajudicial commitments were rarities; the usual practice was to indict, and then to take them upon a writ of *capias*; the ancient law was tender of a man's liberty, and then were the writs framed in the register 'de odio et atia et de tradendo in ballium,' and the writ of *Habeas Corpus*.

By *Magna Charta* 19 Hen. 3. cap. 29. which hath been confirmed forty times by subsequent acts of parliament, it is enacted, that 'nullus liber homo imprisonetur nisi per legem terræ,' which I shall explain anon. This was made upon a grievance then complained of, *viz.* illegal commitments: what could those be in that age, but taking men's persons without a record to found a charge or accusation? And that it was so appears by Coke in his comment upon those antient statutes: he says, that there is no invasion upon this law till Edward 3d's time, and then the people quickly resented it; for in 5 Edw. 3. cap. 9. the great charter is confirmed; but then in 25 Edw. 3. cap. 2. it is fully and more at large expressed, and recited, that whereas it is contained in the great charter of the franchises of England, that none shall be imprisoned, unless it shall be by the law of the land; it is awarded, asserted, and established, that from thenceforth none shall be taken by petition, or suggestion made to our lord the king, or to the lords of his counsel, unless it be by indictment or presentment of his good and lawful people of the neighbourhood, though *Magna Charta*, and the rest of the seven statutes mentioned in the *Petition of Right* usually quoted upon these occasions, be in the general and have ambiguous words in them, or words made ambiguous by the king's counsel in most ages, yet this is plain and express, and needs no strain on our side. And I cannot find it ever pretended to on the other side to be a strain, they are so plain that the inference is easy, and hard to be avoided. I will not, I must not adduce authorities, against the commitment by a privy council, but methinks they are strong against an extrajudicial commitment by a single lord of the council, unless Mr. Attorney will argue, that the council cannot commit by reason of this law, but a single privy counsellor is out of the words of the act; and when I hear that, he may expect another answer.

Now for the words 'per legem terræ:' in *Magna Charta*, in 2 Inst. 51. my lord Coke doth indeed say, that in some cases a man may be taken and arrested before indictment or presentment; and one case which he mentions is, by lawful warrant, where there is a witness against an offender: upon suspicion there may be an apprehension, but there cannot be a com-

mitment, with a charge of an offence, unless there be an indictment or presentment, or a witness against the offender; now there can be no witness, but there must be an oath: so it is by all laws, a man cannot be a witness, though he may be an informer, unless he be sworn; and by our law, even peers, if they are witnesses, must be sworn. Now that a single privy counsellor can give an oath, I can find no law or precedent for it; it is true the privy council may administer an oath, and have done so for a long time, but that every single member can do so, doth not follow, it is no more a consequence, than that because the house of peers can give an oath, therefore every peer may at home do the same. He is one of his majesty's most honourable privy council, and that is all; and that is only (as I may with respect say) when they are 'capitulariter congregati.'

Further, my lord Coke saith, That to make a commitment lawful, the first requisite is, that he, or they, who do commit, have lawful authority; now whether a particular lord of the council hath such a lawful authority, I must submit to your judgment.

In ancient times the practice was for the privy council not to send for men in custody, but to issue citations and summons, and that by their messengers, as doth the court christian by their pursuivants, who cannot arrest or imprison, as in 12 Co. Rep. 49. In all the records cited by Coke, in his Jurisdiction of Courts, cap. Privy Council, or Pryn's Animadversions upon that book, 46. there is no precedent mentioned of imprisoning, or bringing men into custody, but only summons and citations to appear; and there are many of them.

I shall not meddle with their power of committing for a contempt, or refusal to answer, or question the authority of the countess of Shrewsbury's case,* 12 Co. Rep. 93. but I urge this only to shew the improbability, that our law should vest such an authority in each member of the privy council.

In Pryn's Animadversions on 4 Inst. it is in his comment upon Coke's Epilogue, page 422. is a very notable record. Rot. parl. anno 21 Hen. 6. num. 56. where there is an impeachment of Talbois, for a notable riot upon several lords of the council met within the palace at Westminster; and it is prayed, that he may be sent to the Tower of London, to be kept without bail or mainprize for twelve months, to answer all indictments for that and other riots, before the king and his justices in his bench within that time; and if the constable of the Tower should suffer him to escape, or go at large, he should forfeit 1,000*l.*; to which article of the Commons petition and bill the king assenteth, so that here was an act of parliament (for such it is, though in form of a petition granted, as was the ancient form,) to enforce a commitment to the Tower for any affront to the lords of the council: now I would beg leave to observe, that it was not by way of

punishment for the offence, but to secure the parties to be forth-coming to answer an indictment, the punishment must be fine and imprisonment: now it seems strange, that an act of parliament should be made to secure a man, in order to answer an indictment for an assault and riot upon the lords of the council when any one lord of the council might have committed him, and he might have been indicted next term; for the fact was done at Westminster in Middlesex.

I find a case in 1 Leon. 70, 71, it is Newell's Case; he was committed 'per Mandatum Francisci Walsingham, Militis, principalis Secretarii, et unius de privato concilio Dominae Reginae,' and the return was held insufficient. I must agree, that the book says it was, because the cause for which he was committed was not alledged, and they amended the return, and then they made it 'ex mandato totius concilii privati, ita quod corpus ejus paratum habere non possimus;' it is true, that at last the court took exceptions to it, because the body was not brought, and there was a very wise distinction made by the court, that where one is committed by one of the privy council, there the cause ought to be returned; but where the whole council do commit, there need no cause to be alledged. Now it is plain, that this was a distinction without a difference; for by the Petition of Right, and the seven old statutes, and all the records and law of old time, no Englishman ought to be deprived of his liberty by an extrajudicial commitment or warrant, unless the cause be shewn; and I would infer, that the then king's or queen's council thought a commitment by one lord of the council was not legal, and therefore they added 'ex sententia et mandato totius privati concilii,' as it seems to me, that the court did slide over that question, by insisting upon the other exception: however, at the most, though it make against the novelty of the commitments, yet it can never make for the legality of them, when the whole is considered.

Upon these considerations, I hope it will appear to your lordship and the court to be a doubtful point, whether a secretary of state may commit; and the consequence of that is, that the prisoner ought to be bailed, according to Bushel's case, Vaughan 157. That the king's-bench may bail in any case of treason, if they think fit, but the common bench must remand, if the cause of the imprisonment returned be just, and well returned: but then there is this distinction: if it shall appear to the court, that the party was imprisoned against the law of the land, they ought, by force of Magna Charta, to deliver him; but if it be doubtful, and under consideration, then he ought to be bailed: and this hath been the practice upon convictions by justices of the peace; and the excuse of the judges in 4 Car. for their Remittitur, &c. that it was *quousque*, &c. i. e. till further consideration, was never allowed as a wise or legal one. Now I hope I have said enough to make it doubtful.

* See Vol. 2, p. 769 of this Collection.

Then for messengers, I have further matter to urge; the reason why commitments are required to be to the county gaol, by 5 Hen. 4, cap. 10, is mentioned in 2 Inst. 43, and 9 Co. Rep. 119, that they may have their trial at the next gaol delivery, or sessions of peace: and my lord Coke saith, that at common law the committing to prison is only to this end, that the party may be forthcoming to be duly tried according to the law and custom of the realm: and the abbots of St. Alban and Crowland lost their franchises of having gaols, because they detained men in prison, for a long time, without making a deliverance; and all this doth in reason argue against messengers power to make their houses prisons.

My lord Coke saith, in 2 Inst. 43, that the statute 5 Hen. 4, extendeth to all judges and justices for two reasons: 1st, Because this act is declarative of the common law; and 2dly, 'Ubi lex est specialis, et ratio ejus generalis, generaliter accipienda est;' and if so, this was a false imprisonment of sir James Montgomery, and then the consequence is what I urged the other day.*

I find further, in 2 Inst. 705, that by the parliament roll, 51 Edw. 3, numb. 68, it appears, that gaols were anciently to be repaired at the king's charge; and by lord Coke upon 23 Hen. 8, cap. 2, concerning the new erecting of gaols, his opinion is that the same cannot be done without act of parliament: and I cannot find any act of parliament for making the forty-two houses of the messengers to be lawful prisons; if there be any such, I suppose the king's counsel will shew them to your lordship; nay, I cannot find any grant of such a franchise to them.

Besides, the reason of the law is with us. Out of the county gaols you have at every sessions of gaol delivery calendars of the prisoners that are in custody there, but of the prisoners in custody of messengers you can have no notice; and this is no small mischief in respect of the subjects liberty; for at a gaol delivery the calendar is to be called over, and by the calendars in former times were the executions made without any special warrant from the judge or recorder, which is but a late practice.

Besides, according to 3 Inst. 209, a man regularly before the Habeas Corpus act, if committed for treason or felony by a person having authority to commit, was not to be discharged until he was inquired of, and either indicted or acquitted, or an Ignoramus found, and delivered by proclamation; now how this could be practised of a messenger's ward, is to me unaccountable.

I will in this case offer to your lordship what I find in this matter, with sincerity, and submit it to your judgment. There is in 12 Co. Rep. 129, a case cited out of the year books, viz. 22 Assize, pl. 49. One was beheaded for killing Adam Walton, 'nuncii domini regis,

'missi ad mandatum ejus exequend', which is there taken for petit treason: This is all that I can find of ancient authority, which mentions such a creature as a messenger; but nothing can be inferred from hence to prove the messengers in ordinary to be keepers of gaols for the receipt of felons and traitors.

Nay, I find further a case, which seems to overthrow the commitment to any other prison than the county gaol: I will but name it, and submit its consideration to your lordship's judgment; it is in St. John's Argument at a conference concerning the attainder of the earl of Strafford (it is fol. 46, of the 4to print of that Argument) the case of sir John Mortimer,* who was drawn, hanged, and quartered for breaking the prison of the Tower, having been committed thither upon suspicion of treason: but this was in 2 Hen. 6, and upon an attainder by bill in parliament, and so it is in Cotton's Abridgment of the Records, p. 368, and there it is mentioned as a strange thing to be done in times of peace, and when the realm was in quiet, for a man to be condemned without trial or arraignment. Now, I might infer from hence, that if the law had been undoubtedly plain concerning an escape out of the Tower, as a legal prison, there had been no need of an act of parliament to attain him; but however, it may argue thus much, that if a bill were necessary for such an escape, that an act of parliament is certainly necessary to make a rescuer of one suspected of treason out of the custody of a messenger to be guilty of treason; but all these I submit to your lordship's consideration. All that I contend for is, to make it a doubtful question to the court, whether upon this return, taking it for true, it is possible to indict and convict these prisoners for treason? for if not, they ought to be bailed.

Then there is another exception, which I just mentioned the last time, and that is, that it is not mentioned in this warrant, what the species of treason was, for which sir James Montgomery was committed. I shall, as I have already, avoid the repetition of any thing which I then offered; there are several treasons at this day, where the receiving, comforting, and relieving of them afterwards, knowing them to be such, may not be treason; and then in such case the helping him to escape will not be so, and consequently it ought to have been alledged in the warrant, what the treason was for which sir James Montgomery was committed. Now it is no treason to receive and comfort a counterfeiter of the great seal, it is only misprision, for there are no accessaries in treason, and principal he is not, because he did not know of it at the time; to this effect are the words of the book, 12 Co. Rep. 81, so it is of the receiving and comforting a Jesuit, or other Englishman taking orders abroad, and returning into England; for by 26 Eliz. that is made felony; which statute would never have been made, if it had been

* See 2 Brownlow, 41.

* See vol. 3, p. 1477, of this Collection.

treason, Dyer 296, 297. Corrier's Case. If I know that one hath made false money, and receive, comfort, and abet him, this is only misprision: How far these are law I am not to argue, but I suggest the words or effect of the authority, and submit them. Sure I am of this, that if your lordship and the court be satisfied that they cannot be attainted of treason, if the fact be as this return is, then you will not remand them.

Mr. Solicitor was pleased to argue, That these are niceties too subtle for a return upon a Habeas Corpus; but according to Vaughan, 136, the writ of a Habeas Corpus is now the most usual remedy by which a man may be restored to his liberty, if he have been against law deprived of it; and therefore it is, that the writ doth command to know, whether it be according to law, or against law; and therefore the cause of the imprisonment ought by the return to appear, as specially and certainly to be judged by the court, where the return is made, as it did appear to the court or person authorised to commit, else the return is insufficient. Now, the reason of adjudging that return in Bushell's Case to be insufficient, was because it was only said, that their verdict was against full and manifest evidence, and did not say what; by the same reason, sir James Montgomery's treason ought to have been set forth in this case; and as to credence, no more ought to be given to a person committing, when a Habeas Corpus is brought, than there is to a court giving a judgment, when a writ of error is brought to examine it, in order to affirmance or reversal; for an Habeas Corpus is brought in like manner to examine the cause of the party's imprisonment, either to bail or discharge, or else to remand him, which is to affirm the commitment to be legal, and upon good cause.

I have modern authority to justify much nicer exceptions to commitments, than those I have mentioned; such authority as Mr. Solicitor will not deny to be good. Complaint hath been of a warrant of commitment, that it did not appear in whose reign the treason was committed, whether in the late king's, or the former king's; it is observed in the Remarks upon Cornish's Trial,* and I am sure Mr. Solicitor must own that to be much nicer than what I have offered upon this; I do not justify that, but my exceptions to the return.

Mr. Serjeant Levinz argued on the same side, that the return was ill, because the commitment was to a messenger; it ought to have been to a county gaol, that the custody upon an apprehension ought to be but 24 hours, Britton 19. Customer of Normandy 456. Hil. 22 Edw. 4, pl. 4, those messengers exacted fees, viz. 6s. 8d. or 10s. per diem. It is in effect to fine the party before he is convicted. Then he said, that all those questions might have been spared, if Mr. Attorney would consent to their being bailed.

* See vol. 11, p. 455, of this Collection.

Lord Chief Justice. In truth most of them might have been spared, for they have been argued more for pleasure than necessity.

Then Mr. Attorney General, and Mr. Solicitor insisted, that the rescue of one in custody upon suspicion of treason, was treason; that the setting forth the overt act was more for the advantage of the prisoner, than barely alledging the species of treason: that as to the Secretary's commitment, it was owned now not to be such a novelty as was pretended the last time: that it was very ancient; that the case in 11 Leon. is very flat to that purpose; that in the Tower they found a commitment in 1660, by secretary Morris, and that many more had been since, but that sir Joseph Williamson, who had the papers, was now in Ireland; that it was not needful, that he who commits should be able to give an oath; that the House of Commons could not give an oath, and yet could commit; and more to the like effect.

Sir Bart. Shower replied, That he was glad to hear there were so few precedents for a Secretary's power; that if there had been more, Mr. Attorney would have shewn them; that the House of Commons' power was an instance not fit for him to answer; that he did desire no more of Mr. Attorney, than that a Secretary could not give an oath, and then he hoped the consequence would be plain; and so submitted it to the court.

L. C. J. I did always give credit to the Resolutions of the Judges in Anderson, and it is part of a privy counsellor's oath to take care of the king's person against all traitors, &c. Was there not a gaol delivery at common law? and are not the commissioners by their commission to inquire of the prisoners in that gaol, and a grand jury to be impannelled? and consequently, doth not the law suppose some to have been committed thither before? and then, by whom they were committed? though a messenger be not a proper officer, yet any person may be ordered to be received for convenient time for examination,† &c. [Brit. 19. 92.] Commitments regularly ought to be to the county gaols, and I wish the justices of the peace, who commit to New Prison, and the Gatehouse, were here to hear this. But, Mr. Attorney, the question is, whether you ought not to have specified these two things in your warrants, for what treason sir James was committed? and my reason is, because the escape will be same species of treason with that for which the party rescued was committed; and secondly, that he had done a treason, that sir James was guilty. But, Mr. Attorney, will

* Justices of the peace are not by common law, but appointed by statutes, the first of which was 1 Edw. 3, cap. 16. By common law there were only conservators of the peace, whose power was very short of a justice's now-a-days. See Crompton's and Dalton's Justice.—Note to former Edition.

† This is at most but for three days, Cro. Eliz. 830.—Note to former Edition.

you further consider of it, though I think we must bail them in the mean time, an Habeas Corpus being *festinum remedium*; but I would hear my brothers' opinion.

Justice *Rokeby*. Sir Barth. Shower, I am glad to see that you have rectified a mistake you were in about a Secretary's commitment: It was long before sir Lionel Jenkins's time: Walsingham committed near 200 years ago; and there is another precedent in 2 Leon. 175. Hilleyard's case, I think, that a Conservator Pacis at the common law may commit, and so may a constable; it is incident to his power of committing, that he may give an oath, and take a recognizance, and (*quod mirum*) one of the counsel may commit. I would not have the students go away with the notion of the novelty of it: I take Secretaries of State to be great officers; they are centinels to watch for the preservation of the king, and the common peace of the realm: and for messengers, for

any thing appears, he might be only carrying to gaol; but yet I think they ought to be bailed, because it is not expressed in the warrant, what the species of treason was for which sir James Montgomery was committed.

Justice *Eyre*. There may be a difference between carrying to prison, and a commitment with a charge upon them; and there may be a difference between specifying and not specifying sir James's treason. Upon the whole, I think they ought to be bailed.

Justice *Gregory* was absent.

Accordingly they were bailed to appear the last day of term, to answer such matters as should then be objected against them.*

* See the right of a Secretary of State to commit, discussed at large, in lord Camden's Judgment, in the Case of Seizure of Papers, A. D. 1765, in this Collection.

383. The Trials of ROBERT CHARNOCK, EDWARD KING and THOMAS KEYES, at the Old Bailey, for High Treason: 8 WILLIAM III. A. D. 1696.*

March 11, 1696.

THIS day the Trial of Robert Charnock, Edward King, and Thomas Keyes, who were indicted at Hickes's-Hall on this day seven-

* See 1 Salk. 288. 2 Salk. 631. 3 Salk. 81. Holt, 133. 301. 681. East's Pleas of the Crown, chap. 2, sect. 7. 48. 55. 60, and the Authorities there referred to. See, also, in this Collection, vol. 5, p. 466, a Note to the Case of Don Pantaleon Sa.

Upon this affair, Burnet says, (vol. 2, p. 171) as follows:

"After most of the conspirators were taken, and all examinations were over, some of them were brought to their trials. Charnock, King, and Keys, were begun with: The design was fully proved against them. Charnock shewed great presence of mind, with temper and good judgment, and made as good a defence as the matter could bear: but the proof was so full, that they were all found guilty. Endeavours were used to persuade Charnock to confess all he knew; for he had been in all their plots from the beginning: his brother was employed to deal with him, and he seemed to be once in suspense: but the next time that his brother came to him, he told him, he could not save his own life without doing that, which would take away the lives of so many, that he did not think his own life worth it. This shewed a greatness of mind, that had been very valuable, if it had been better directed. Thus this matter was understood at the time. But many years after this, the lord Somers gave me a different account of it. Charnock, as he told

night, upon a special commission of Oyer and Terminer, for high-treason, in compassing the death of the king by a barbarous assassination, in order to further and assist an invasion into this

me, sent an offer to the king, of a full discovery of all their consultations and designs; and desired no pardon, but only that he might live in some easy prison; and if he was found to prevaricate, in any part of his discovery, he would look for the execution of the sentence: but the king apprehended, that so many persons would be found concerned, and thereby be rendered desperate, that he was afraid to have such a scene opened, and would not accept of this offer. At his death, Charnock delivered a paper, in which he confessed, he was engaged in a design to attack the prince of Orange's guards; but he thought himself bound to clear king James, from having given any commission to assassinate him. King's paper, who suffered with him, was to the same purpose; and they both took pains to clear all those of their religion, from any accession to it. King expressed a sense of the unlawfulness of the undertaking; but Charnock seemed fully satisfied with the lawfulness of it. Keys was a poor ignorant trumpeter, who had his dependance on Porter, and now suffered chiefly upon his evidence, for which he was much reflected on: It was said, that servants had often been witnesses against their masters, but that a master's witnessing against his servant, was somewhat new and extraordinary.

"The way that Charnock and King took to vindicate king James, did rather fasten the imputation more upon him; they did not deny,

kingdom from France, and subversion of the government, were proceeded upon in manner following.

After opening the court, at which were present a great many of the nobility, members of parliament, and other persons of quality, the petty jury returned by the sheriff of Middlesex to try the prisoners were all called over, being in number above eight-score, and consisting of baronets, knights, esquires, and gentlemen, and the appearances of those who answered to the call were recorded; and six of the judges, viz. The Lord Chief Justice Holt, the Lord Chief Justice Treby, the Lord Chief Baron Ward, Mr. Justice Nevil, Mr. Justice Powell, and Mr. Justice Rokeby, being upon the bench, the prisoners were called for to the bar, and there arraigned upon the said indictments.

Clerk of the Arraignments. Robert Charnock, hold up thy hand (which he did): Edward King, hold up thy hand (which he did): Thomas Keyes, hold up thy hand (which he did). You stand indicted in the county of Middlesex by the names of Robert Charnock, late of the parish of St. Clement Danes in the county of Middlesex, gent. Edward King of the said parish and county, gent. and Thomas Keyes of the same parish and county, yeoman, for that you the fear of God in your hearts not having, nor the duty of your allegiance weighing, but being moved and seduced by the instigation of the devil, as false traitors against the most serene, most illustrious, most clement, and most excellent prince, our sovereign lord William 3, by the grace of God, of England, Scotland, France and Ireland, king, defender of the Faith, &c. your supreme, true, lawful, and undoubted sovereign lord, the cordial love and

that he had sent over a commission to attack the prince of Orange, which, as Porter deposed, Charnock told him he had seen; if this had been denied by a dying man, his last words would have been of some weight: but instead of denying that which was sworn, he only denied, that king James had given a commission for assassination: and it seems great weight was laid on this word; for all the conspirators agreed in it, and denied that king James had given a commission to assassinate the prince of Orange. This was an odious word, and perhaps no person was ever so wicked, as to order such a thing, in so crude a manner: but the sending a commission, to attack the king's person, was the same thing upon the matter; and was all that the witnesses had deposed. Therefore their not denying this, in the terms in which the witnesses swore it, did plainly imply a confession that it was true. But some, who had a mind to deceive themselves or others, laid hold on this, and made great use of it, that dying men had acquitted king James of the assassination. Such slight colours will serve, when people are engaged before-hand to believe, as their affections lead them."

true and due obedience, fidelity, and allegiance, which every subject of our lord the king that now is, towards him our said lord the king should bear, and of right ought to bear, withdrawing, and utterly to extinguish, intending and contriving, and with all your strength purposing, designing and conspiring the government of this kingdom of England under him our said sovereign lord the king that now is of right happily and duly established, altogether to subvert, change and alter; as also our said sovereign lord the king to death and final destruction to put and bring, his faithful subjects and the freemen of this kingdom of England into intolerable and miserable slavery to Lewis the French king to subdue and subject, the 10th day of February in the seventh year of the reign of our said sovereign lord the king that now is, and divers other days and times, as well before as after, at the parish aforesaid, in the county aforesaid, falsely, maliciously, devilishly, and traiterously, did compass, imagine, contrive, purpose, design and intend our sovereign lord the king that now is, to slay, kill and murder, and a miserable slaughter amongst the faithful subjects of our lord the king throughout this whole kingdom of England to make and cause. And the same most abominable, wicked and devilish treasons and traiterous contrivances, intentions and purposes of yours aforesaid to fulfil, perfect, and bring to effect, you the said Robert Charnock, Edward King and Thomas Keyes, and very many others false traitors to the jurors unknown, afterwards, to wit, the said 10th day of February, in the year abovesaid, at the parish aforesaid, in the county aforesaid, and divers other days and times, as well before as after, there and elsewhere in the same county, falsely, maliciously, advisedly, clandestinely, traiterously, and with force of arms, &c. did meet, propose, treat, consult, consent and agree our said sovereign lord the king by lying in wait, to assassinate, kill, and murder: And that execrable, horrid, and detestable assassination and killing the sooner to execute and perpetrate, afterwards, to wit, the same day, year and place last mentioned, traiterously did treat, propose, and consult of the ways, manner and means, and the time and place where, when, how, and in what manner our said sovereign lord the king, by lying in wait the more easily you should kill; and did consent, agree and assent, that forty horsemen or thereabouts, of you the said Robert Charnock, Edward King, and Thomas Keyes, and the said other traitors unknown, and others by them to be hired, procured and paid, with guns, carbines and pistols with gunpowder, and leaden bullets charged, and with swords and other arms armed, should lie in wait, and be in ambush, our said sovereign lord the king in his coach being when he should go abroad, to set upon, and that a certain and competent number of those men so armed upon the guards of our said sovereign lord the king then and there attending upon him, and being with him, should attack, and should overcome and

subdue them, whilst others of the said men so armed our said sovereign lord the king should assassinate, kill, slay and murder: And also that you the said Robert Charnock, Edward King, and Thomas Keyes, your treasons and traitorous intentions, designs and contrivances aforesaid, to execute, perpetrate, fulfil, and fully to bring to effect afterwards, to wit, the day and year last abovesaid at the parish aforesaid, divers horses, and very many arms, guns, pistols, swords, and other weapons, ammunition, warlike matters, and military instruments, falsely, maliciously, secretly and traitorously did obtain and buy, collect and procure, and cause to be brought, obtained, collected and procured with that intention, the same in and about the detestable, horrid and execrable assassination, killing and murdering of our said sovereign lord the king as aforesaid, to be used, employed and bestowed, against the duty of your allegiance, and against the peace of our sovereign lord the king that now is, his crown and dignity, as also against the form of the statutes in such cases made and provided.

How say you, Robert Charnock, are you guilty of the high-treason whereof you stand indicted, or not guilty?

Charnock. My lord, I desire I may have a copy of this indictment, that I may advise with counsel upon it before I plead.

L. C. J. (Sir John Holt.) Pray, Mr. Charnock, will you speak out, that we may hear what you say.

Char. My lord, I find here is a very bad crime that is laid to my charge; I desire that I may have a copy of the indictment, to advise with counsel upon, and that I may have counsel to assist me in my trial, and to direct me, who am an ignorant man in these matters, how to manage myself according to the new act made this sessions of parliament, for regulating trials in cases of high-treason.

L. C. J. Have you not had counsel already to advise and direct you, Mr. Charnock?

Char. My lord, I had notice on Wednesday, that I should be tried this day, and it was Saturday last before I could get my counsel to come to me.

L. C. J. And what did your counsel advise you? Did they tell you, you were to have a copy of your indictment, by virtue of the late act of parliament?

Char. My lord, though the act does not take force as to some things till the 25th of this month, yet the equity of that act, it being now reduced into a law, is conceived to reach to cases of the like nature before the 25th, and I desire the act may be read.

L. C. J. You shall have it read, if you will, but of what avail or benefit it will be to you, I cannot tell; for you yourself take notice, that it is an act of parliament made this session, and is not to take effect until the 25th of this month. You now here stand indicted before the 25th, and for a treason committed before, and therefore you can't claim, nor have any benefit or advantage by this act; but you are to be pro-

ceeded against according to the law before, and the practice used in all proceedings against other persons in your circumstances. And it is the known practice, and received for law, in all times before this new act was made, That no copy of an indictment for high-treason should be granted, nor counsel assigned, or permitted to assist the prisoner in making his defence: true it is, a copy of the indictment has been often desired, but as true, that it has as often been denied.

Char. My lord, the equity of this act (it being now an act of parliament) is now in force, as much before the 25th of this month as after.

L. C. J. Equity is nothing in these cases: you are here tried by the law, and we are bound to go in all such cases according to the rules of law, and are not to be guided by any equitable consideration, further than the law itself does allow us.

Char. But, my lord, the ground of that act, which is the reasonableness and equity that all prisoners should be made capable of fairly defending themselves, is now in force, I say: and I hope your lordship and the court will look upon it to be reasonable, that I should have the benefit of that equity.

L. C. J. I tell you, we are not here in a court of equity, but must proceed according to the rules of law; and the law you now speak of, does not yet commence.

Char. My lord, I am informed, for I am very ignorant in these matters myself, that there is nothing that I now desire, which is contained in this act, but what was law before the making of this act, though the practice may have been otherwise.

L. C. J. Then I must tell you, Mr. Charnock, you have been very much misinformed; for if all that is contained in this act of parliament that you mention, was common law before, there would have been no occasion for the making a new act of parliament.

Char. My lord, I do not say that all things in this act of parliament were law before, because there are several things in it that have not been law before. But, my lord, there are several things besides; and particularly those two things which I now desire, a copy of the indictment and counsel to assist me, were things that were agreeable to law before; and I must take the liberty to appeal to a judge that I see upon the bench, my lord chief justice Treby, as to his own opinion, and desire he would please to declare, whether formerly, in a conference between the lords and the commons, he did not deliver his opinion, That it was the common law, that a prisoner should have a copy of his indictment, and counsel to assist him.

L. C. J. Here is my lord chief justice Treby, you had best to apply yourself to him for his opinion.

L. C. J. Treby. Pray, sir, what is your question you would ask me?

Char. My lord, I am here for my life, and must take all the advantages that I can; I am

here arraigned for a very grievous offence ; I desire I may have a copy of the indictment, and counsel to assist me in my defence. Here is an act of parliament, out of the equity of which, I apprehend I ought to have some advantage ; for I am informed, that what I desire was common law before the making of the act ; and particularly, that your lordship's opinion, in a conference between the two houses, was, that the prisoner ought to have those advantages by the common law.

L. C. J. Treby. Then, sir, I take your question to be this : You would have my opinion to be declared, That this act, which was lately passed, for regulating Trials in Cases of High-treason, and all the particulars in the act were common law before.

Char. No, my lord ; I do not say that all the particulars in the act were common law before.

L. C. J. Treby. Then, pray, sir, name your particulars, and I will endeavour to give you an answer.

Char. My lord, the particulars that I do ask are these : first, That I may have a copy of the indictment, and counsel to advise me, because it is a grievous crime I stand here accused of, and that I may have them to assist me at my trial in court : This I do insist upon from the equity of the act of parliament, and your lordship's opinion at the conference that it was common law before.

L. C. J. Treby. As to my opinion about the having a copy or counsel, I do not think or believe, that I ever said that it was common law.

Char. My lord, I beg your pardon ; I was informed your lordship had delivered such an opinion, at a conference between the lords and the commons : But I desire the assistance of counsel, because I myself am ignorant of the law : and particularly as to this point, whether I am not entitled to the equity of this act of parliament ; for it now having passed both Houses of Parliament, and had the royal assent, it is a good law ; and though it be to take its commencement on the 25th of this month, yet that which is the law of all laws, the reason and equity of it, is, and always will be, the same.

L. C. J. No, Mr. Charnock, that does not follow, that because the wisdom of the law makers has thought it to be equitable *de futuro*, therefore it should be law now ; which, as I told you before, is the rule that we are to go by ; it is equity and justice, that the proceedings be according to this act of parliament, from and after the 25th of this month ; but it is not justice that such proceedings should be till then, because not according to law.

Char. My lord, the ground of all laws is equity ; and certainly it cannot be equity, that a prisoner should make his defence against an accusation in writing, without having a copy of it.

L. C. J. The time of the court must not be spent in this manner, you have been already

told, that by law you are not to have a copy of the indictment ; but you are to plead without having any copy ; for there is no law now in being that allows the giving of such a copy, and it is but a short question that you are asked in order to your trial, viz. Are you guilty ; or not guilty ?

Char. My lord, it is impossible for me to go to trial presently, and without the assistance of my counsel.

L. C. J. Why, had you not notice of your trial ?

Char. My lord, I confess I had notice upon Wednesday last.

L. C. J. Had you not your counsel with you since that ?

Char. Yes, my lord, I had on Saturday last, but from that time I have not been able to prepare myself as I think I ought ; and I cannot conceive but that I should have the assistance of some counsel to direct me in my trial ; for here is a very great crime and heinous charge laid against me in this indictment, and I am very ignorant in all law proceedings.

L. C. J. It is very reasonable that there should be convenient notice given to all persons in your circumstances ; and truly this day seven night is a very convenient notice ; especially you having had, by your own confession and acknowledgement, counsel with you in the mean time.

Char. But, my lord, what is the advantage of having notice, if one have not privilege of pen, ink and paper, and one's counsel and friends coming to them, and privacy, without the presence of the jailor ?

L. C. J. What say you that are of the king's counsel ? Was there counsel allowed to come to them ?

Att. Gen. (Sir Thomas Trevor) My lord, there was order given, that their own counsel that they desired should come to them.

Mr. Baker. My lord, as soon as ever they desired counsel there was an order for it, and left with the jailor, that he should permit the counsel to come to them, and be with them in private.

L. C. J. Then though you had not your counsel come to you till Saturday, it was your own fault, for you had an order for counsel as soon as you desired it : and even from Saturday is a reasonable time enough to prepare for answering the question, Whether guilty or not guilty ?

Char. I suppose Mr. Bale is in court, who gave notice on Wednesday, and I acknowledge he came upon the Thursday, and asked if I would have any body come to me ; and he took then the names of the counsel that I desired might come to me ; and told me he would carry them to Mr. Attorney General, and see what his opinion was of them ; I suppose he did so : for upon Friday he came again, and brought me an order for it ; but when that order was brought, the counsel that was desired was not to be had, or at least with very

great difficulty, because it was the time of the assizes, or very near it, and counsel were gone or going out of town; so that we could not have the advantage of the order for counsel.

L. C. J. Look you, Sir, we think you have had convenient notice, with liberty of consulting whom you had a mind to; if you have neglected your opportunity of consulting them, you must blame yourself, and nobody else; we must go on according to law.

Att. Gen. My lord, they had the liberty of naming their own counsel, and the names were brought to me: and as soon as ever they were so brought, those that were named had leave to go to the prison to them; and they had a further order than the first, which was, that their friends should be permitted to come to them? but that was not, as it was not convenient to be, in private; but the other order was, that the counsel should speak with them in private, and not in the presence of the jailor.

L. C. J. Pray hear what Mr. Attorney says, that your counsel was ordered to be with you in private.

Char. But there was no order, my lord, for my solicitor to be with me in the absence of the gaoler, who is the only proper person for the consulting with, and for going about to summon the witnesses.

L. C. J. We think you have had convenient notice, and all the allowances that can be in such a case. Ask him to plead.

Cl. of Ar. Robert Charnock, Are you guilty of the high treason whereof you stand indicted, or not guilty?

Char. My lord, I hope you will give me some more time to get my witnesses, that are now absent; several of them are ten miles out of town; and therefore I would beg your lordship to give me some time.

L. C. J. Why, is ten miles such a distance, that you could not have your witnesses between this day seven-night and this day? But besides, Mr. Charnock, what you now urge is out of time; you speak too soon to put off the trial, for there can be no trial till issue joined; and that cannot be till plea pleaded.

Char. My lord, I was never instructed in quereks of law, nor bred up to the law; and I hope your lordships will take care that I be not hurt for want of knowledge in the forms of law.

L. C. J. You may assure yourself, Mr. Charnock, you shall not be hurt by your ignorance in the law. All the harm you will receive will be for having done contrary to the law, and there is none of your counsel, if they have been faithful to you, but must tell you the same things we tell you now.

Char. My lord, if I am to have no counsel, I must desire that the court would be pleased to take the greater care of me: for, as I have been informed, that was the reason of the practice of denying counsel, that the court should be of counsel for the prisoner.

L. C. J. Mr. Hardesty, ask him whether he be guilty, or not guilty.

Cl. of Ar. Robert Charnock, are you guilty, or not guilty?—*Char.* Not guilty.

Cl. of Ar. Culprit, how wilt thou be tried?

Char. By God and my country.

Cl. of Ar. God send you a good deliverance.—*Edward King*, How say you, Are you guilty of the high-treason whereof you stand indicted, or not guilty?

King. My lord, I beg the same favour that Mr. Charnock has done, that I may have some more time to prepare for my trial, and a copy of the Indictment, and counsel assigned.

L. C. J. But you hear what has been said to Mr. Charnock upon those points, and the same rule that was given in his case, you must expect will be in your case.

Cl. of Ar. What say you, are you guilty, or not guilty?—*King.* Not guilty.

Cl. of Ar. Culprit, how wilt thou be tried?

King. By God and my country.

Cl. of Ar. God send thee a good deliverance.—*Thomas Keyes*, are you guilty of the same high-treason, or not guilty?

Keyes. My lord, I have had no counsel at all.

L. C. J. But you might have had, if you would; you had an order for it as well as the others.

Keyes. My lord, I was a servant to captain Porter; I was not able to fee any counsel.

L. C. J. But you can tell whether you are guilty, or not guilty.

Cl. of Ar. Art thou guilty, or not guilty?

Keyes. Not guilty.

Cl. of Ar. Culprit, how wilt thou be tried?

Keyes. By God and my country.

Cl. of Ar. God send thee a good deliverance.

Char. My lord, I desire I may have the favour of pen, ink, and paper, upon my trial.

L. C. J. Yes, yes, you shall have it; and if you have a mind to it, you shall have the Indictment read to you in Latin.

Char. My lord, my ignorance in forms of law made me not ask that before, because I did not know whether I should properly ask it or not: And I do not know whether I should ask it properly now.

L. C. J. Yes, it is a very proper time to ask it, and you shall have it, if you have a mind to it.

Char. My lord, I do really desire it, if it be a proper time for me to have it.

L. C. J. Read the Indictment in Latin.

Char. And now, my lord, I hope your lordship will please that I shall have pen, ink, and paper, that I may make the best observations I can, since I cannot have a copy.

Cl. of Ar. ‘Juratores pro Domino rege super
‘saerum suum presentant quod Robertus Char-
‘nock, nuper de Parochia Sancti Clementis
‘Dacorum, in Com. prædicto, Generosus; Ed-
‘wardus King, nuper de Parochia Sancti Cle-
‘mentis Dacorum in Com. prædicto, Genero-
‘sus; et Thomas Keyes, nuper de Parochia
‘Sancti Clementis Dacorum, in Com. prædicto,
‘Yeoman, timorem Dei in cordibus suis non
‘habentes, nec debitum Ligeanciæ suæ ponde-
‘rantes, sed instigatione diabolica moti et se-

ducti, ut falsi Proditores contra serenissimum, illustrissimum, clementissimum et excellentissimum Principem, Dominum Gulielmum Tertium, Dei Gratiâ Angliæ, Scotiæ, Franciæ, et Hiberniæ Regem, Fidei Defensorem, &c. Supremum, verum, legitimum, legalem & indubitatum Dominum suum; cordialem dilectionem, ac veram et debitam obedientiam, fidelitatem et ligeanciam, quas quilibet subditus dicti Domini Regis, nunc erga ipsum Dominum Regem gereret, et de jure gerere teneatur, subtrahentes et penitus extinguere intendentes et machinantes, et totis suis viribus excogitantes, designantes et conspirantes, gubernationem hujus Regni Angliæ sub ipso Domino Rege nunc de jure feliciter et debite stabilitam omnino subvertere, mutare et alterare, nec non eundem Dominum Regem ad mortem et finalem destructionem ponere et adducere; ac subditos suos fideles, et liberos homines hujus Regni Angliæ, in servitutem intolerabilem et miserrimam Ludovico Regi Gallico subjugare et mancipare decimo Die Februarii, Anno Regni dicti Domini Regis nunc septimo, et diversis aliis diebus et vicibus, tam antea quam postea, apud Parochiam prædictam in Com. prædicto, falso, malitiose, diaboliçe et proditorie eum fassassaverunt, imaginati et machinati fuerunt, excogitaverunt, designaverunt et intendebant dictum Dominum Regem nunc occidere, interficere et murdrare—

Char. What word was that last, Sir?

Clerk of Ar. Murdrare.

Char. That is an odd word, I cannot understand what it means.

L. C. J. It is a term of art, the signification of it is to murder:—Go on, Mr. Hardesty.

Cl. of Ar. Ac stragem miserabilem inter fideles subditos ipsius Domini Regis per totum hoc Regni Angliæ facere et causare et easdem nefandissimas, nequissimas et diaboliças proditoris et proditorias machinationes, intentiones et proposita sua prædicta perimplend' perficiend' et ad effectum redigendum ipsi iidem Robertus Charnock, Edwardus King, et Thomas Keyes, et quam plurimi alii falsi proditores juratoribus prædictis ignoti, postea, scilicet, eodem decimo die Februarii, anno supra dicto, apud parochiam prædictam, in com' prædicto, ac diversis aliis diebus et vicibus tam antea quam postea, ibidem et alibi in eodem com' falso, malitiose, advisate, clandestine, frauditorie ac vi et armis, &c. conveniebant, proposuerunt, tractaverunt, consultaverunt, consensaverunt et agreeaverunt ad ipsum Dominum Regem ex insidiis et dolo percutiend', Anglice *to assassinate*, interficiend' et murdrand'; et ad execrabilem, horrendam et detestabilem assassinationem, Anglice *assassination*, et interfectionem illas citius exequend' et perpetrand' postea scilicet eisdem die, anno, et loco ultimo mentionatis, proditorie tractaverunt, proposuerunt, et consultaverunt de viis, modis et mediis ac tempore et loco ubi, quando, qualiter, et quomodo dictum Dominum Regem sic ex insidiis facilius inter-

ficerent, et consenserunt, agreeaverunt et assenserunt quod quadraginta homines equestres, aut eo circiter de ipsis, Roberto Charnock, Edwardo King et Thoma Keyes et prædict' aliis proditoribus ignotis ac aliis per eos conducend' procurand' et impendend' cum bombardis, sclopis et sclopetis, pulvere bombardico et globalis plumbeis oneratis, et cum gladiis ensibus et aliis armis armatis insidiati forent et essent in subsessa, Anglice *ambush*, ad eundem Dominum Regem in Rheda sua, in Anglice, *his coach*, existentem, quando foris iret invadend'; quoq; quidam et competens numerus de hominibus illis sic armatis in satellites, Anglice *the guards*, ipsius Domini Regis eum tunc ibidem attendentes, et secum existentes aggressi forent et eos devincerent et expugnant et dum alii eorundem hominum sic armatorum ipsum Dominum Regem percuterent, interficerent, occiderunt et murdrarent; et etiam iidem Robertus Charnock, Edwardus King et Thomas Keyes ad prodisiones et omnes proditorias intentiones, designationes et machinationes suas prædictas exequend' perpetrand' perimplend' et plenarie ad effectum redigend' postea, scilicet die et anno ultimo supra dictis, apud parochiam prædictam, diversos equos et quam plurima arma, bombardas, sclopos, enses et gladios, et alia ornamenta, munitiones et res bellicosas et instrumenta militaria falso, malitiose, secrete et proditorie obtinuerunt, emebant, colligerunt et procuraverunt ac emi, obtineri, colligi, et procurari causaverunt, eâ intentione ad illa in et circa detestabilem, horrendam et execrabilem assassinationem, interfectionem et murdrum dicti domini Regis ut præfertur utend' occupand' et impendend' contra ligeanciam suæ debitum, et contra pacem dicti Domini Regis nunc, coronam et dignitates suas, nec non contra formam statut' in hujusmodi casu edit' et provis.'

Char. My lord, I desire the indictment may be read again, for there is so great a noise in the court, and that gentleman hath not the most perfect delivery; he is more used to law-Latin than to any other. But I beg I may have it read again, that I may as perfectly as I can understand it.

The Indictment was read again in Latin.

L. C. J. Look ye, you that are the prisoners, every one of you has the liberty to challenge 35 of those that are returned to serve upon the jury that is to try you, without shewing any cause; now, if you will all join in the same challenge, then we can try you all together, as ye are all together jointly in the indictment; and save the time and trouble that will otherwise be unavoidable. But if you will not join in the same challenge, but every man challenge for himself, as by law he has liberty to do, we must be forced to try you single, and therefore we would know of you, whether you design to join in your challenge, or not?

Char. My lord, I hope the court will give me leave to have my solicitor by me during

my trial, that I may be instructed in some measure how to manage myself, and when it is proper for me to speak, and what.

L. C. J. No, we can order no such thing, you must speak for yourself.

Char. My lord, I am ignorant of the methods of law, and may make a great many mistakes and slips, and omit what may be material to be observed for my defence, and therefore shall the more need a friend or solicitor to be by me, to mind me of it.

L. C. J. No, we cannot direct any such thing by law. What say you as to your challenges?

Char. As to the jury, I had not a copy of the pannel till yesterday, and I have been informed, that it is usual to have a copy of the pannel ten days before the trial; they are gentlemen that I have no knowledge of, nor can come at any account of their qualifications, so as to make proper challenges.

L. C. J. You have the same privilege that is ordinarily given to persons in your condition.

Att. Gen. There was order given for a copy of the pannel to be delivered.

L. C. J. That was not of right, but of favour; and it is a practice that has of late obtained; but for what you talk of ten days, that never was in any case, nor is it practicable; you have the same favour shewn you, that all other prisoners have, and you can expect no more: but you do not answer the question, whether you will join in your challenges or not?

Char. It is an indifferent thing to me, my lord.

L. C. J. Do you agree to it, Mr. King?

King. My lord, I do not well understand it, I am ready to do any thing I should.

L. C. J. What say you, Keyes?

Keyes. My lord, I have had no counsel at all, to advise me about any thing.

L. C. J. I tell you what the law is in such cases: you may, every man of you, challenge 35 peremptorily without cause; but if you do not all agree in the same challenges, ye cannot be tried together by the same jury: but the court must separate you, and try you every one singly.

Char. My lord, I have got a copy of the pannel, if these gentlemen that are by me, do agree to join in the challenge, I am very well content; it is indifferent to me.

L. C. J. Do you understand what is said to you, Mr. King, and Mr. Keyes? Every one of you may, without shewing any cause, except against 35 of those that are returned of the jury which are to try you, if you have no mind that those should be sworn; but then if each of you do severally challenge 35, ye cannot be tried by the same jury.

Char. I hope, my lord, if I do challenge, as I do not know how I shall be enabled without knowing their qualifications, the court will put me in mind when I come near the number, that my challenging may not injure me; because I am ignorant in the law, and perhaps may slip

in point of number; and therefore I would beg that your lordships would allow me a solicitor to assist me, and put me in mind, that I may not run into errors.

L. C. J. You have been told over and over, that we cannot do that; the court will take care that you be informed in time, that you do not exceed in challenging a greater number than you ought: what say you, Mr. King? Do you agree that one shall make challenges for you all?

King. I do agree, that whatsoever exception Mr. Charnock makes, I will abide by.

Char. My lord, I cannot but think it hard, that I have not either counsel or solicitor; my counsel that I had are out of town.

L. C. J. Why, was there no counsel but those that are gone the circuit?

Att. Gen. My lord, he had order first for one counsel, and then for another, and whomsoever he named he had order for.

L. C. J. If you will chuse none but those you cannot have, that is your own fault; you, Mr. Keyes, will you join in the challenge?

Keyes. Yes, with all my heart.

Cl. of Ar. Then you the prisoners at the bar, those men that you shall hear called and personally appear, are to pass between our sovereign lord the king, and you, upon trial of your several lives and deaths: if therefore you, or any of you, will challenge them, or any of them, your time is to speak unto them as they come to the book to be sworn, and before they be sworn.

Then those of the pannel that had appeared were called, and the prisoners challenged 33. And the names of those that were sworn are as follow; Samuel Harwer, Jonas Morley, Anthony Nurse, Jasper Hodgden, William Farnborough, William Bird, Simon Smith, Thomas Dunck, Richard Heath, John Mills, James Ketwich, and Christopher Redknap.

Then Proclamation for Information, and the witnesses appearing, was made in usual form.

Cl. of Ar. Robert Charnock, Hold up thy hand, (Which he did): Edward King, Hold up thy hand, (Which he did): Thomas Keyes, Hold up thy hand, (Which he did): you gentlemen of the jury, look upon the prisoners, and hearken to their cause; they stand indicted by the names of, &c. (*prout* in the Indictment, *mutatis mutandis*)—And against the form of the statutes in that case made and provided. Upon this indictment they have been arraigned, and thereunto have severally pleaded, Not Guilty, and for their trial have put themselves upon God and their country, which country you are: your charge is to enquire of them, and every of them, whether they be guilty of the high-treason whereof they stand indicted, in manner and form as they stand indicted, or Not Guilty; if you find them, or any of them, Guilty, you are to enquire what goods or chattels, lands or tenements they had, at the time of the high-treason committed, or at any time since. If you find them, or any of them, Not

Guilty, you are to inquire whether they fled for it; if you find that they, or any of them, fled for it, you are to inquire of their goods and chattels, as if you had found them Guilty; if you find them Not Guilty, nor that they did fly for it, you are to say so, and no more; and hear your evidence.

Mr. *Montague*. May it please your lordship, and you gentlemen of this jury; the record that has been now read unto you, is an indictment of high-treason, which charges the three prisoners at the bar, Robert Charnock, Edward King, and Thomas Keyes, with a traitorous conspiracy and design to subvert the government of this kingdom, and to murder the king, and to bring the subjects and freemen of this kingdom into slavery and subjection to the French king; and to this end the indictment sets forth; That upon the 10th of February last, and divers other times, as well before as after, at the parish of St. Clements Danes, in the county of Middlesex, these three prisoners at the bar, with divers other traitors, unknown, did consult and agree to assassinate the person of our sovereign lord the king, as he was riding in his coach; and did likewise agree, that forty horsemen, of which they themselves were to be part of the number, should lie in ambush, and set upon the king, so being in his coach, and upon the guards that were to attend him: And it likewise charges them with buying horses and arms, for the execution of this wicked and villainous intention: to this they have pleaded Not Guilty. We shall call our witnesses, and prove this matter upon them; and then we doubt not, but you, gentlemen, will do justice, according to your evidence.

Att. Gen. My Lord, and you Gentlemen of the Jury, these gentlemen at the bar stand indicted for a most horrid and barbarous conspiracy, to assassinate and murder his majesty's royal person: gentlemen, this assassination was to be seconded with an invasion from France, where troops lay ready at Calais, as soon as the dismal stroke was given, to have landed upon our coasts; which if it had taken effect, we had not only suffered that most unspeakable loss of the king, but it would have made an end of all our liberties and laws at once.

Gentlemen; this offence in its nature is so horrid and barbarous, that as it needs no aggravation, so it is incapable of having any, by any words that can be used; for the very naming of an assassination of a king, carries such horror and detestation in itself, to all honest people, that it is impossible to aggravate it by any expressions that can be used about it; but there is this peculiar consideration to be had, by all Englishmen, who love their country, that this designed assassination upon the person of his present majesty, was to take away the life of a king, who every body knows first ventured his own life to restore our religion, laws and liberties, when they were just expiring under the oppression of popery and tyranny. And as he ventured his life first to restore them, so

he has since, upon all occasions, with the utmost hazard exposed his royal person to the most imminent dangers, for the preserving and maintaining our religion, laws and liberties against the power and violence of the common enemy: this consideration to all true Englishmen must have a very great weight, and create the greatest horror and detestation, both of the barbarous design, and of all those who had any concern or hand in it, to attempt upon the life, not only of a king, but of such a king.

Gentlemen, when you hear the evidence that we shall offer to you, to prove this bloody conspiracy against these prisoners, I doubt not but that there will be enough, and more than enough, to satisfy all true-hearted English subjects, and all people that have a desire to preserve our constitution and government, in what danger we and our posterity were of being utterly ruined, and involved in a common destruction. I shall not detain you longer with any discourse about the heinousness of this offence, because every man's own thoughts cannot but suggest to him, how dismal the consequences must have been, if so fatal a stroke had been given.

But, Gentlemen, I must crave leave to take up so much of your time, as to open how this bloody, execrable conspiracy was first framed, and afterwards carried on by the prisoners at the bar, together with others, till it was very near putting in execution, had not the infinite mercy of God prevented it, by a timely discovery.

Gentlemen, this conspiracy was first framed and consulted upon the last year; there were several consultations and meetings, at several places about the town, for this purpose; then, and at those consultations and meetings, there were present captain Porter, the prisoners, and others of whom you will have an account from the witnesses; and at that time they had an expectation of commissions from the late king to authorize the design; that not coming, they yet resolved to put it in execution before the king went away. But because the French troops were then not in readiness to come over hither, to protect them after the execution of the bloody design, it was necessary for them to fly thither for shelter: and therefore they endeavoured to procure a vessel to be ready to carry them over to France. But they could not get a vessel time enough; and then the king's going over into Flanders quickly after, prevented the execution of the design for that time, and so matters rested till the king's return.

About two or three months ago, sir George Barclay, who is an officer in the late king James's guards in France; and some other officers, with sixteen or eighteen troopers in those guards, privately came over from France to put this design in execution; and he did acquaint Mr. Porter and Mr. Charnock with the design, knowing that they had been engaged in the matter before, and so could not but ex-

pect that they would readily assist. This design was treated and consulted of between them at several times, and in several places, at captain Porter's, and Mr. Charnock's lodgings in Norfolk-street, at the Globe-tavern in Hatton Garden, the Nag's-head-tavern at St. James's, and several other places; several consultations and meetings were had between the prisoners at the bar, and others, whom you will hear named at these meetings; several ways and methods were proposed how it should be best effected: it was proposed by some, that it should be done by ambuscade, that should be laid near the king's house at Richmond, such a number on foot were to lie in the wood, there ready to attack the king as he came by, and the rest of the conspirators at the same time to fall on the guards. But this method was not so well approved of, as that which was afterwards proposed and agreed to: that is, there were to be three parties of them, and the place was the lane, lying between Brentford and Turnham-green, at the end next Turnham-green, which the king used to pass through, upon his return from Richmond: The order and method of the design was this; sir George Barclay, with eight or ten more, was to attack the coach, and by firing into it, to have killed the king, and all in it, and the rest were to attack the guards, in two parties, on each side of the lane, whereof Mr. Charnock and Porter were to command one, and brigadier Rookwood the other. In order to see how feasible this design might be, the prisoner King, captain Porter, and Knightly, were to go and survey the place; and the next day after that consultation, they went to view the ground, and did very carefully do it, both on this side the water, and on the other side the water; and they came back and met the rest of the company at the Nag's-head-tavern late at night, to give an account what they had done in order to this enterprize. It was agreed the number should be about forty; sir George Barclay was to make up about twenty, Mr. Charnock was to furnish eight, captain Porter seven, and so in other proportions, in all to make up the number of forty; which they thought were enough to effect and accomplish the design.

In order to make this matter the more sure, they did appoint two to lodge and wait at Kensington near the guards; who were to give notice when the king went abroad: and they had their several persons assigned to whom they should give notice, who thereupon were to send orders to the several parties; one of which was Chambers, who was to give notice to the prisoner at the bar, Mr. Charnock; and there was one Durance, who was to give notice to sir George Barclay; and when such notice was given, then they were to send orders to the several persons, who were to be concerned in this bloody business, to come at the time appointed, to be disposed of into their several posts.

Gentlemen, in order to the furthering of this design they did likewise send Durance to go and view, and give them an account of the most

convenient inns at Brentford, and Turnham-Green, and the places adjacent, which were least liable to observation, where the men might be the most conveniently disposed of, to lie ready against the time, when they were to execute this barbarous assassination; accordingly, he went, and took an account of the several inns within that compass, and they were to be billeted by two or three in an inn, so as not to be observed; sir George Barclay and his party at Turnham-Green, and the rest at Brentford.

Gentlemen, after they had thus laid the design, Saturday the 15th of February was the first time pitched upon for the putting it in execution, if the king went abroad, as he used to do, upon Saturdays, to Richmond to hunt; and if they had notice from Durance and Chambers, that he was so to do, which notice they had; and every thing was prepared in order to have perpetrated this villainous design; but it happened that the king went not abroad that day, of which they had notice about noon from Chambers to Charnock, and Charnock sent word so to Porter's lodgings, and then the order for their getting together was countermanded, and the note, by which Charnock sent word, was subscribed with the name of Robinson; which you will hear is a name he goes by, as well as by that of Charnock.

Thus they were disappointed at that time; but they were not discouraged from pursuing this inhuman enterprize, but resolved to go on the next opportunity that should be given. And to omit several things that intervened, which the witnesses will give you an account of, on the Friday following they met again, to have every thing ready against the next day, which was Saturday the 22nd of February; when they expected the king would go abroad, as he usually did on that day of the week; and that meeting was at the Sun Tavern in the Strand, and there were present captain Porter, sir William Perkins, sir George Barclay, and Mr. Charnock; and at that time there was a discourse amongst them about the disappointment, which they had had the week before, and some of them had a jealousy that a discovery had been made of their design: but then, upon further consideration, they concluded, if it had been so, they should not have met there, but should have been taken up: and therefore they concluded the king's staying at home that day was but accidental, and so resolved to put their conspiracy in execution the next day.

While they were there, several persons from whom captain Porter had undertaken, that is, one Cranborne, Kenrick, and Keyes the prisoner at the bar, came to Porter; these were carried into another room, and commanded all to be ready the next day, when it was resolved to put the assassination in execution: and then captain Porter asked Kenrick for Sherborne, who it seems had been undertaken for; but it was answered, that he asked so many questions

about the matter, that he did not think fit to trust him.

The next morning they met again at captain Porter's lodgings; and there met, as the witnesses will tell you, amongst others, Mr. Pendergrass, Mr. Keyes, and Mr. King; King brought a message to captain Porter from sir George Barclay, to know the names of those that were concerned, and upon that message captain Porter writ down the names of his men, who were for his *quota*, and sent the list by Cranborne to Mr. Charnock, to add his list to it of the men he was to have under him; Cranborne afterwards came back, and brought the list that captain Porter sent, with the additional list sent by Mr. Charnock, written with his own hand, and subscribed R. C. and Cranborne told them that Chambers had sent word, that the king would go out that morning: at the hearing of which there was much joy amongst them; for they hoped then their wicked design would be put in execution that day. There was a discourse then likewise, that Porter had a piece which carried six bullets; and this, it was ordered, should be put into the hands of Pendergrass, who was to be one of sir George Barclay's men, to attack and fire into the king's coach.

This was upon Saturday the 22nd of February, when they had news that the king was to go abroad, and every thing was to be put in execution at his return from Richmond. From captain Porter's lodgings they went to the Blue Posts in Spring Garden; but about 12 o'clock there came news from Chambers, one of the orderly men at Kensington, that the king did not go abroad that day: This put them into a very great confusion; they then thought some discovery must needs be made because of the disappointment two Saturdays together; and Keyes, the prisoner at the bar, came up and told them, that the guards were all come back in a foam, and the king's coaches were brought back to the Meuse: And this confirmed them in their former jealousy that the matter was discovered; upon which captain Porter, Mr. Pendergrass and Mr. Keyes went together to lie hid some time; but they said they would send Keyes to Mr. Charnock, to let him know where they might be heard of; and if the matter was not discovered, they would still go on to put it in execution: But they could not part without drinking some traitorous healths, which the witnesses will tell you of, to the restoring of the late king and his queen, and the prince of Wales; and after all, one of the company taking an orange in his hand, began a health to the squeezing of the Rotten Orange; and in this manner it was drunk by all of them before they parted, though they were under the apprehension at that time of being discovered already.

This is the beginning and progress of the several consultations that were had for the carrying on this execrable, traitorous conspiracy. I have opened it shortly to you, but you will hear it much fuller in its several parts by the

witnesses. By what I have opened, you cannot but observe, that it was very near coming to be executed, if there had not been a discovery of it time enough, through the providence of Almighty God, to prevent it. They had agreed, after the intended assassination, to keep together, till they came near the town, and then they were to lie hid till the French troops landed, which they were assured of were ready upon the least intimation of the success of this conspiracy.

Gentlemen, every body may guess at the dismal consequences that would have followed, had this bloody design taken effect; and I am sure, as we and our posterity could not have expected any thing less than the perpetual yoke and burden of slavery and Popery, if it had pleased God to permit this conspiracy to take effect; so I hope we shall always remember the merciful hand of Providence, that has detected and disappointed it.

Gentlemen, I shall not detain you any longer; I have opened unto you part of that which will more fully be made out by the witnesses; only I would observe, that the providence of God has not only made a discovery to prevent the execution of this abominable villainy, but hath brought this conspiracy so far to light, by such unquestionable testimony, that no man can doubt of the reality of it, which I hope will raise in every honest man's mind an abhorrence and detestation of those principles, upon which so villainous and barbarous a design was founded; and I think I may say, that after the evidence you will hear this day, no one will pretend any doubt of the truth thereof, but either such as are sorry for the discovery, or such as knew too much of the conspiracy before. I shall trouble you no further, but call our witnesses, who will give you a clear and full account of this conspiracy. Swear captain Porter. (Which was done.)

Sol. Gen. (Sir John Hawles.) Captain Porter, I would not lead you with any question, but pray will you give the court and the jury an account what you know concerning any conspiracy about assassinating the king, and when it was to be done, and where, and how, and by whom; and particularly what relates as to that matter to the prisoners at the bar.

Char. My lord, there are two things that I must beg of the court, in relation to the witnesses that are to be produced, and the evidence that is to be given against me at this time: and the first is, that before any of the witnesses give any evidence against me, the rest that are to be sworn and produced, may be kept out of court, till they that are called have severally given their evidence, that one may not hear what the other says. That I suppose is but reasonable in a case of this nature, and what was never denied, but always allowed, as I have been informed.

L. C. J. There is but one witness sworn, and I believe, that there are none of the rest here.

Char. Yes, my lord, here is one gentleman in court whom I suppose to be an evidence, and that is Mr. De la Rue.

L. C. J. If there be any others of the witnesses, let them withdraw till they be called for; let there be somebody to look after them, and attend them. (Which was accordingly done.)

L. C. J. Mr. Charnock, you have your desire as to this matter, all the rest of the witnesses are withdrawn.

Char. My lord, there is another thing that I have to beg of the court, and that is, in relation to the evidence in general, That if there be any thing proved to be spoken in company, and talked of by way of common discourse, or only in jollity in ordinary conversation, that may not be interpreted as a proof of any settled design or practice.

L. C. J. Look you, Mr. Charnock, who can tell what the evidence will be until it be given? you will hear what is deposed by the witnesses, and you have pen and ink, and may make such observations as you think fit: when the witnesses are heard, you will have all the advantage that can be allowed you, and you may then propose your objections to the matter of their evidence; which, no doubt, will have their just weight with the court: in the mean time, have you any exception to this man's being a witness? If you have no exception against him, then he must give his evidence; and after he has delivered himself, and the king's counsel have done with him, you are at liberty to ask him what questions you think fit.

Sol. Gen. Captain Porter, I desire you will acquaint the court and the jury what you know of any conspiracy to take away the life of his majesty, when it began, in what manner it was carried on, how far it proceeded, how it came to be disappointed, who were concerned in it, and what relates to the prisoners at the bar, as to their share therein.

Capt. Porter. My lord, I am unfortunately engaged in this matter, and have made a frank discovery, to make the king all the atonement I can, for having been concerned in such a design. Some weeks before this conspiracy for assassinating the king was in hand, there came to my lodging—

Att. Gen. Captain Porter, I would not interrupt you, but to put it into a method, and order of time, will you please to recollect yourself, and give the court and the jury an account of your knowledge about the first beginning of this conspiracy the last year; I would not lead you, and therefore I ask you the general, and no particular question.

Char. My lord, I suppose that any question about what was done the last year is not at all to the purpose in this case, for there is nothing mentioned in the indictment of the last year.

L. C. J. It is in the indictment divers days and times, as well before as after.

Char. The crime for which we are accused is laid to be the 10th day of February, 1695.

L. C. J. The day is not material, but only

a circumstance, but in form, some day before the indictment preferred, must be laid*; and though the day mentioned in the indictment is the 10th of February, yet it is also said, that the things contained in the indictment, of which you are accused, were done likewise at divers days and times, as well before as after, and so the indictment comprehends even what might be done the last year as well as this.

Char. I beg the favour of the court in this matter, for sure the 10th of February last can no way be supposed to be in the last year.

L. C. J. I told you before, the day is not material, nor are the witnesses nor the king's counsel tied up either to the particular time or place mentioned in the indictment, so it be within the county, and before the indictment preferred. All that is to be regarded, is, that no evidence be given or admitted of any other species of treason, but what is contained in the indictment; for a man may certainly be indicted for a treason committed this year, and upon his trial, evidence may be given of the same treason committed the year before.

Char. But then how can a man prepare for his defence?

Att. Gen. The time is but a circumstance, it may certainly be proved at another day than what is laid in the indictment, and yet very good proof; and so it is in all other cases, as well civil as criminal.

Char. Mr. Attorney General has said enough, I think, to confute himself; for if one year may be put in the indictment, and another year brought in in the evidence, how shall any man be able to apply himself to his defence, whose thoughts run only upon the time laid in the indictment? I hope neither the court nor the king's counsel will come so hard upon us, as to put our thoughts quite out of all order, that when we apprehend we are only to defend ourselves against what is said to be done this year, we must afresh prepare ourselves to answer what was done the last year.

L. C. J. It is always so; for form sake, there is a particular time laid in the indictment, but the proof is not to be tied up to that time; but if it be proved at any time before or after, so it be before the indictment preferred, it is well enough: and not without great reason, for the treason consisting in imagining and compassing the king's death, which may be manifested by divers overt-acts, some before, some on, and others since, the 10th of February, yet they are evidences of one treason, which is the compassing the king's death.

Char. Then we may be under an obligation to give an account of all the transactions of our lives, if that be the rule.

L. C. J. No, not so neither, for that very treason assigned in the indictment must be proved, and therefore you are only to give an answer to that, and nothing else.

* As to this, since the operation of the Stat. of W. 3, see the Case of Lowick in this same year.

Char. But, my lord, it may give a very great loose, and much hinder our defence; for as it is now desired that proof may be given, of what was done last year, at the same rate, they [as well before and after] may signify seven years ago.

L. C. J. And so it may if your conspiracy reached so far, or did then begin, and was afterwards pursued; this is not any thing that is unusual, but the common law is plain in it. Well, what say you, Mr. Porter?

Capt. Porter. My lord, I will give you an account, if your lordship pleaseth, of what was done this year; and if any questions afterwards be thought fit by the king's counsel to be now asked me, about what passed before, I will answer them very readily.

Att. Gen. Well then, go on your own way, we will reserve ourselves till afterwards.

Capt. Porter. Some weeks before this design was on foot, for assassinating the king, sir William Perkins, when he was in town, was at the same place where Mr. Charnock and I did lodge; it was about the latter end of January: he asked Mr. Charnock where he would be at night; and I told them, if they were not about private business, I would meet them. He told me, there were some friends come from France, and that something was a doing that would be for the service of the king: I told them, if any thing of that nature was a doing, I would readily engage in it; and they told me I should know it very soon. A little after I fell sick of the gout, and could not stir from my chamber: but then Mr. Charnock did acquaint me, that sir George Barclay, and those that came from France, had brought a commission to raise and levy war upon the person of king William, and he asked me how many I could bring to join with them, if the king landed; I desired to consider of it, and he told me sir George Barclay would come to him about it. Accordingly, he and Holmes came to the house where we lodged, in Norfolk-street, and there they were in private with Mr. Charnock; and afterwards, because I was lame, and could not stir, they came into my room, and sir George Barclay told me, he was glad to see me in good health, but sorry to find me lame, but he hoped to see me abroad in a little time; and I told him, I hoped so too. They said, they were going then to some company, and they hoped to see me afterwards. After that there were several meetings that we had, particularly at the Globe Tavern in Hatton-Garden, the Nags-Head at St. James-street, and the Sun-Tavern in the Strand, and in all these places we did consult together, which was the best way, and where was the best place to assassinate the king, when he came from hunting. Sir G. Barclay told us he had some money to buy horses, but not much, he had as much as would furnish about forty. *Capt. Charnock* said, he would bring six or seven men, that should come out of the country. *Sir William Perkins* said he would lend five horses, three to be mounted by men of his own, the other two by such as should be provided, I

promised to bring seven men with horses, and sir George Barclay said that Lowick and others that came over with him from France, would engage in the design, and make up the number. I desired very much to see the commission that came from the late king, and asked Mr. Charnock about it; he said he never saw it, but sir William Perkins told me, he had seen it, and that it was all writ with king James his own hand, and signed by himself. All this was agreed to, and then there were consultations in what method it was to be done. Several proposals there were; one was to set upon him as he came from Richmond by the road, others when he was on horse back at Kew. Sir Geo. Barclay was for having it done by ambuscade in the park by Richmond, and therefore desired me to go with Mr. Knightly, and view the several places and ground thereabouts, to find out which was the most convenient place. The day before we were to go captain King came to me, and would know if we were to go about such a matter, and proffered to go with us. I told him I had never a horse, but he said, he would get one. We went that night to the Swan at Knights-bridge, and there we lay, and went the next day to view the ground, and came the next evening to the company, to give an account what we had done; and upon the account that we gave, sir George Barclay's mind was altered, and it was agreed to do it in the lane coming from Brentford to Turnham-Green, and the particular manner was agreed on too. There was one Rookwood that was to command one party of sir George Barclay's men, to attack the guard; he told us, he had bought twenty horses which were to be employed in this expedition; they were to be divided in three parties, and sir George Barclay was to have four out of each of the other parties, and to seize upon the king's coach, and to shoot into it, and kill the king, and all those that were with him: and this was to be done on the 15th of February, which was a Saturday, and the king usually went to Richmond on Saturdays. We had two orderly men (as they were called) who were to lie at Kensington, to give intelligence when the king and the guards went out, the one was Chambers, and the other one Durant, a Flemming, I think, or I do not well know what countryman he was; and Durant was to bring an account when the guard went out, and Chambers when the king went out, and when we had notice that the king was gone, we were to go by three or four in a party to prevent suspicion, and we were to be dispersed in the several inns about Brentford and Turnham Green. Sir Geo. Barclay was to be at the King of Bohemia's head; and we ordered a man to give notice to him when the king landed, and then he was to give notice to us, and so we were to form ourselves into our several bodies, to take our several posts as were agreed upon. I asked him, what he thought to do when the matter was over, how we should dispose of ourselves? He told me, we need not fear any thing, but might go to town

and lie still, and that there would come a sufficient number from abroad ready to assist us. That 4 or 5,000 French were to divert in Scotland, and the king would be near the French shore with a sufficient army. On Friday before the 22d, when it was to have been executed again, we met at the Sun-tavern in the Strand, and there discoursed, for a matter of half an hour, about the former disappointment, and several in the company were afraid the design was discovered: but then I told them, if it had been so, sure we should have been taken up before now; upon which it was agreed, then let us resolve upon it again to-morrow, and so it was resolved upon. Capt. Charnock said, he could not stay, because he should want some men that were come up out of the country on purpose. I said, I was afraid my horses were sick, and could not be used in the service, and sir William Perkins thereupon undertook to furnish me, and told Mr. Charnock and me he had sent to Mr. Lewis, that belongs to the earl of Feversham, to procure some, having, as he said, promised so to do. I sent the next morning to have a note for two, by Mr. Cranburne, and he sent me a note back again by Cranburne, that he had sent to Mr. Lewis, and Mr. Lewis said, he would help him to three horses, with saddles, holsters and pistols, and desired the list of my men, which I sent him, and he sent it me back again with the list of his own, and then I shewed it to Mr. De la Rue, and we were preparing all things for the execution of design, and presently after news came, that the king did not go out that day neither: upon which I said I would go out of town, and I asked capt. Pendergrass to go with me, and we sent Keyes to bring linnen unto us, but he did not come until the Wednesday, and upon the Thursday we were taken.

Att. Gen. Captain Porter, you mention several consultations, at several times and places; who were present at any, and which of them? Were any of the prisoners at the bar there, and which?

Capt. Porter. There was Mr. Charnock, and Mr. King, at all of them.

Att. Gen. What do you say about Keyes? What was he?

Capt. Porter. He was my servant a year and a half.

Att. Gen. Was he acquainted with the assassination?

Capt. Porter. Yes, he was, and was present at most of the consultations. He hired horses for me to be employed in the business. On the first Saturday, he hired two, I gave him money for them, and he did know upon what account they were hired.

Att. Gen. Was he present when news was brought of the disappointment?

Capt. Porter. Yes, he was both times.

Att. Gen. You are sure he was present then?

Capt. Porter. Yes, the second time he said, that he met the king's guards that were come back all in a foam, and that he had spoke to

one of my lord of Oxford's regiment, and that something was muttered, upon which he feared a discovery.

Att. Gen. Did Keyes agree to be one of the men, that should be concerned and act in this business?—*Capt. Porter.* Yes, he did.

Att. Gen. What quality is he of? What is his profession?

Capt. Porter. He used formerly to help to dress me, and he was to look after my linnen and equipage.

Sol. Gen. Had he not been a trumpeter? Was not that his profession?

Capt. Porter. He was a trumpeter, and used sometimes to entertain us with his trumpet.

Mr. Conyers. You speak of a meeting at the Sun-tavern in the Strand upon Friday the 21st of February, where it was resolved to execute this attempt upon the next day.

Porter. Yes, there was such a meeting.

Mr. Conyers. Was Keyes there at that time?

Porter. He was not in the room where we were, but he was in another room in the same house, where I went out to him, and there was he, Cranburne and Kenrick.

Mr. Conyers. Pray what did you go to them for?

Porter. I went to acquaint them what was resolved upon; and I told them they were resolved to do it the next day, to which they agreed, but that I thought my horses would not be ready, but I hoped I should get some other.

Mr. Conyers. Pray what other discourse had you in that company: with whom, and about what?

Porter. Mr. Kenrick came to me with his arm in a string; either he had broke his arm, or pretended so to have done. I then asked him for Mr. Sherbourn, whom he had mentioned before to me, as one that was likely to be concerned: he told me Mr. Sherbourn asked a great many questions about the design, which he did not think fit to answer; I thanked him for telling me so, and said I would not send to him.

Mr. Cooper. Pray, captain Porter, give me leave to ask you one question, Can you remember what number of men Charnock was to provide for this enterprize?

Porter. He promised seven or eight men, some of which should bring their horses out of the country, others he would borrow or hire for them.

Att. Gen. Pray, Sir, was there any body sent to take an account of the inns about the place where this assassination was to have been executed?

Porter. Yes, Mr. Durant was, and he did bring us an account of the several inns about Brentford and Turnham-green.

Att. Gen. As to the list of men, which you say you sent to Charnock, and he sent you back with a list of his men, pray can you tell whose hand that list of his men was in?

Porter. I know captain Charnock's hand

very well, and, to the best of my knowledge, it was his own hand, and subscribed R. C.

Att. Gen. Sir, you have given an account of the meeting the 22d at your lodging.

Charnock. I was not there, he says.

Att. Gen. First let me ask you, how came it that it was not put in execution the 15th; for that you did not tell us before?

Porter. I tell you, Sir, it was because the king did not go out that day, according as we had notice, that he intended to do: Durant wrote first word that the guards were gone before, upon which I went for my men, and about noon I received a note from Mr. Charnock that the king did not go out that day.

Att. Gen. Pray what name was subscribed to that note?

Porter. R. Robinson, which was a name he used to go by sometimes.

Att. Gen. And pray in whose hand was that note?

Porter. To the best of my knowledge it was captain Charnock's, I know his hand very well.

Att. Gen. My lord, if the prisoners will ask him any questions, they may.

L. C. J. Will you ask him any questions?

Char. My lord, in the first place I desire the judgment of the court, whether he be a legal evidence or no. I conceive he is not, and I hope your lordships will think so too: for he makes himself a criminal by his own confession, and that of a very heinous crime, and it is equal in my judgment (and as I have been advised, who I must still say am ignorant in these matters) as if he had confessed it upon an indictment, and then the law can take no notice of him as a good witness. And if he were no legal witness then, I take it by the same reason he is no legal witness now: For the crime is the same, and it is an acknowledgment in open court.

L. C. J. Look you, Mr. Charnock, if it had been a confession upon an indictment, it would have been a conviction, which would have had quite another operation: but it not being upon an indictment, it is no conviction, and therefore he is a legal witness, though he does acknowledge himself to be guilty of the crime.

Char. Then my lord he is looked upon as no good evidence, in my judgment, because he is a criminal.

L. C. J. He is a legal evidence, though he does confess himself guilty of the crime.

Char. He owns himself a partner in a bloody design, and to convict me, he swears to take away my life, to save his own. I cannot imagine why he should be accounted a legal witness, that is a party by his own confession in such a matter.

L. C. J. Pray, who can tell better what was intended and done in such a conspiracy than he that was a party in it?

Char. My lord, he has forfeited his life by his own confession, and now he would, by swearing against me, take away my life to save his own.

L. C. J. Whatsoever objections you have

against the credit of his testimony, you may make what use of them you can in the proper time; but for any thing that yet appears, he is a legal witness.

Char. My lord, I know not how far he is a legal witness, therein I must be governed by the judgment of the court; but sure it will take away from the credibility of his testimony, his own acknowledgment of his being guilty of such a crime. Though he may be a legal witness, he cannot be a good one. And I hope the gentlemen of the jury will consider of it, when a man comes to take away other men's lives to save his own, by accusing them of crimes which he acknowledgeth himself to be guilty of.

L. C. J. Look you, Mr. Charnock, for that matter, it is so in all cases of this nature, not only in cases of high-treason, but of robberies and burglaries, and the like, where the parties concerned are, and always have been allowed to be good witnesses against their accomplices in those crimes. Will you ask him any questions, Mr. Charnock?

Char. My lord, here is another thing, which I apprehend, I have reason to object against the testimony of this witness; he does not only swear to save his own life, and take away another's to deserve the saving of his own, but there is in this case swearing to get a reward, for there is a reward of 1,000*l.* a piece promised by proclamation, for the apprehension of this man and others. And not only a pardon, but the 1,000*l.* to any of those in the proclamation who shall discover and take any of the proscribed persons. Now, where a man stands accused by proclamation, and his own life is thereby concerned, and a reward is proposed for any of the conspirators discovering and apprehending the others, it is a hard matter to admit any one that acknowledgeth himself guilty of such a crime, to prove a prisoner guilty of that crime under those circumstances. Besides, my lord, I have known this gentleman, and though he may have had an estate, yet since I have reason to suspect, and perhaps it may be very well known, that the fortune he had is lavished away; to make up that damage, he may be tempted to undertake this way of swearing. So I think he cannot be a good evidence, and I hope your lordship will think so too, and that he is to receive no credit or countenance before an honest jury, as I doubt not these gentlemen are, that are to try us.

L. C. J. Mr. Charnock, do not mistake yourself; he is to have no reward by the proclamation unless he had come in voluntarily, and apprehended one of the others; for only those that apprehend any of the persons named in the proclamation, are to receive any part of the reward, not any of the witnesses against any of them; the reward is for the apprehension, whether they be found guilty or not guilty.

Char. But still, my lord, he cannot be a good witness, for it looks as if he was a man that was willing to have become an evidence,

because we, whom he has accused, particularly myself, were permitted to be taken, and then in the mean while he seems to withdraw, only that he might be taken as a colour. For my part, I know not but that it may be a contrivance of his own, to be colourably taken up, because he is so willingly an evidence, as the jury may perceive he is.

L. C. J. It is certainly a very hard matter, if not impossible, to discover crimes of this nature, if the accomplices in those crimes shall not be allowed to be good witnesses against their fellow conspirators.

Char. My lord, I must submit to the judgment of the court that he is a legal witness. But though I shall not press upon the legality, yet I must say he is not a good witness for all the reasons that I have urged.

L. C. J. Nay, he is a very good witness, if he be a legal witness; but the credit of what he says, as in all other cases, must be left to the jury, who are judges of the matter of fact and the credibility of the witnesses.

Char. My lord, when persons will own themselves guilty of joining in so barbarous a crime as we stand indicted for, and accused of, sure there will be little credit due to their testimony.

L. C. J. His credit must be left to the jury, who are the judges of it; now if you will ask no questions, I must speak to the rest. Mr. King, will you ask him any questions?

Char. I speak this only in general; but I have some remarks that I have made upon the evidence that has been given, out of which, when I have told you of them, questions may arise, which it may be fit for me to propose, and I shall desire your lordship's leave accordingly.

L. C. J. Look you, Mr. Charnock, you shall be heard all that you have to say, when your time comes for your defence, and to make what observations upon the evidence you please. But the matter is now, whether you will think fit to cross-examine the witnesses that are produced for the king, or to ask them any questions?

Char. My lord, I have taken some notes of what has been said, and I desire I may make the best use of them that I can.

L. C. J. You may make what use you will of your notes, and make what observation you will make any question you ask intelligible.

Char. My lord, captain Porter in his evidence has said that this conspiracy was in the latter end of February. Now I apprehend his oath is not valuable upon this Indictment, because the offence is laid the tenth of February, and so his conspiracy that he talks of, was after the time laid in the Indictment.

L. C. J. I believe you mistake him, Sir.

Att. Gen. If he pleases to ask him, I suppose he will find himself mistaken.

Capt. Porter. My lord, I say the latter end of January; if I said February I mistook.

L. C. J. And so it must be; for the two and twentieth of February was to have been the

second time for the execution of the design, and several of the conspirators were taken the next day.

Char. My lord, I desire capt. Porter may be asked, where it was, and when, that I brought sir George Barclay and Mr. Holmes into his company?

Capt. Porter. It was the beginning of February, at my chamber, in the same house where Mr. Charnock lodged, and I was then sick of the gout.

Char. My Lord, I declare it, I know nothing of it. Then he says, we had several meetings, particularly at three several taverns; by what I can observe, there is no time at all, nor at any of those three places that there was any sort of conspiracy for the assassinating of the king.

L. C. J. Yes, he says, that you met at those places, where you did consult about assassinating of the king, and the ways and methods how it should be carried on, and that you was at those consults; for Mr. Attorney asked him particularly, Whether you that are the prisoners were there? and he says, Ay.

Char. He says, that we met at the Nag's-head tavern in St. James's-street, where it was agreed that he and Knightly should go and view the ground, to see which would be the most convenient place; and that they came the next night to give an account according to our desire. Now, my lord, I was there at dinner, and capt. Porter did come in at night; and if you do remember, captain, you could not pull off your boots well, and complained of the gout, and was very peevish; and said you had been at Mortlack, and had met with a friend there; That is all that I know. There was capt. King and Mr. Knightly indeed; who sent for some other cloaths, but it cannot be pretended that there was any crime transacted at that time; for you cannot imagine, that I would have to do in any such matter amongst porters and messengers that were to go on common errands.

L. C. J. I will only put you in a right method; You may ask what questions you will now; but you are not to make your observations upon the witnesses to the jury till the king's evidence be given, for then your time will come for your defence.

Char. My lord, it may be I may forget then what may be proper for me to insist upon. If your lordship will please to allow me a solicitor to put me in mind, I should be the better able to manage myself.

L. C. J. You may be helped by your notes; but you have been told over and over, we can allow no solicitor.

Char. My lord, capt. Porter says, I told him there was such a commission brought by sir George Barclay from king James; he says indeed, I told him I never saw it; and I do not know how I could, because I do not believe there ever was any such, and it is improbable there should be any such.

L. C. J. Mr. Charnock, I would not hinder you from saying any thing that would be pro-

per for your defence, nor will interrupt you when your proper time comes.

Char. My lord, what I say is as to what capt. Porter has evidenced, and I will make observations upon one part of the evidence after another, as it is given.

L. C. J. But that is not regular, according to the course of evidence, and will introduce a confusion. You may ask any questions of the particular witnesses, as they are in order, if you will; but your observations, as to your own defence, you must defer, till the witnesses are heard, that so the evidence may be entire, and your defence entire; therefore if you will ask him any questions, say so.

Char. No, my lord.

L. C. J. Then Mr. King, will you ask him any questions?

King. Capt. Porter, Did I mention any thing, or was there any discourse when you and I, and Mr. Knightly, as you say, went out to view the ground, about killing the king?

Porter. The day before we went, we dined together, and it was at the Nag's-head, and he asked if I was to meet Knightly, and go and view the ground, in order to settling the design, which was then talked of, and consulted about; and captain King desired to go with us, and we lay at Knightsbridge; and when we were about it, we discoursed several times of the nature of the place; and captain King did not approve of the place on this side the water, but liked the ambuscade better, which was to have been on the other side the water.

L. C. J. Will you ask him any more questions?—*King.* No, my lord.

L. C. J. Well then, What says the other man, Keyes? Will he ask him any questions?

Keyes. My lord, I have had no body to advise me, no counsel; I was only a servant to captain Porter.

Att. Gen. If then they have done with him, before he goes, I desire to ask him one question. What discourse, or treaty, or consultation about this, or such like a matter, there was the last winter, and between whom?

Capt. Porter. There were several meetings and consultations the last winter between capt. Charnock, sir William Perkins, and myself, about such a thing; and we thought that the quickest way to bring in the king, and restore him to his crown, was by knocking king William on the head; and there were several meetings about the ways of doing it.

Att. Gen. Who else were there at those meetings?

Capt. Porter. There were several others in company.

Att. Gen. But the meaning of my question is, who of the prisoners?

Capt. Porter. I cannot remember any but capt. Charnock.

Att. Gen. Pray will you acquaint us with the reason why it was not done at that time?

Capt. Porter. We wanted a commission from France, which we thought was a necessary authority for us to act by.

Att. Gen. You speak of a list that was brought you again from Charnock, with the addition of those names that were his men; pray at that time was there no discourse about a particular gun that was somebody's, and that one in the company was to have, to be employed in this service?

Capt. Porter. My lord, I said, I had a musketoon that carried 6 or 8 bullets, that captain Pendergrass, who was one of the four out of my quota, that was to go with sir George Barclay, should have if he pleased.

Att. Gen. Captain Porter, I would not lead you, but were there any particular directions given, and what, touching the particular employment of that gun?

Capt. Porter. I remember I told capt. Pendergrass, if the coach made any great haste to get away, he might easily hinder that, by killing or laming one of the horses with that gun.

Att. Gen. Pray recollect yourself, sir, was King, the prisoner at the bar, present at that discourse?

Capt. Porter. Capt. King was then in my room in Maiden-lane, where I then lay, being removed from my lodging at Norfolk-street.

King. Do you say that I heard any such discourse?

Capt. Porter. I cannot say you heard it, but you was present then.

Att. Gen. Was there not some discourse about a defect of the numbers that were appointed, and expected to join in this thing?

Capt. Porter. My lord, I told you I wanted a man, and that was Kenrick, who had his arm in a string; and Mr. De la Rue brought one that I knew not, and some of the company went to the Blue-Posts to tarry there whilst I came to them, and capt. King was present when the news was brought us of the disappointment, and then I resolved to go out of town.

Att. Gen. The next witness, my lord, that we call, is Mr. De la Rue, and we desire he may be sworn. (Which was done.)

Sol. Gen. Mr. De la Rue, we would desire you to acquaint the court and the jury, what you know of any design or conspiracy to assassinate the king, when it began, how it was carried on, and by whom, and by what methods?

De la Rue. My lord, this conspiracy hath been carrying on a great while, for some years: and it originally came from col. Parker, especially as to my knowledge of it; and that was five or six years ago, at St. Germain, when I was there: he proposed it to me, and said he would propose it to my lord Melfort, who was king James's secretary in France. Two years after, he came over into England, it was a little before the business of La Hogue, and he would have had me come over into England with him; upon which I applied myself to my lord Melfort to know whether I should come over hither, yea or no; my lord Melfort advised me to stay there awhile;

for, said he, you will find there is something a doing which will please you. But nothing being done, after that I came to England, and suffered a very tedious confinement here. I became acquainted with Mr. Charnock and capt. King abroad, I have been with Mr. Charnock, Mr. King, Mr. Porter, Mr. Goodman, and col. Parker, here in town several times, and at several places. And now I come to what was a doing the last year. In the months of January, February, and March, till the king's going to Flanders, there were several conferences and consultations about this matter, between sir William Perkins, capt. Porter, and others; I cannot say that ever I was in company with Goodman at that time, when we talked of any thing of this nature. But capt. Charnock carried me to sir William Perkins, whom I had never seen before, to the Mitre-tavern in St. James's market, and there I was asked if I would be concerned in the easing us from the yoke that then lay upon us. I asked which way it was to be done, for I could not understand what was meant, but the taking off the king, and therefore I asked which way it was to be done. Then they asked me, whether I knew where capt. Stow lived; and they employed me to go to his lodgings, and appointed me to meet them at the Star tavern in White-Friars. They were there before me, when I had met with the captain, and brought him thither; but that they thought not a fit place to consult in, and therefore they went to Bromfield's coffee-house, and there they did talk something of it; but they took one another aside, and talked privately amongst themselves, which I took some observation and notice of; and upon enquiry I was told it was because there was an old gentleman in the company, whom they did not care to acquaint with any thing of the matter, because he was too old to have any hand in it, and they would acquaint none with their resolutions, but those that were to be actors in the design. My lord, I was not often in their company after that, but I heard from time to time, how matters went on, and I heard from captain Porter particularly, that they had been at Turnham-Green and liked the place very well, and that the design was to take the king off, or else to hurry him away to Rumney-Marsh alive, and carry him into France.

Charnock. Surely this is not any evidence, because captain Porter only spoke of it, and it is by hear-say, and we are not concerned what other people talk of.

Att. Gen. Pray who was in the room, when the proposals were made?

De la Rue. What proposals do you mean, Sir?

Att. Gen. At the tavern in St. James's-street.

De la Rue. At the coffee-house there was a little talk of it between themselves; but they would not talk much, they said, because there was an old gentleman there who was too old to engage, and they would have none but actors; that I understood to be the reason why they

talked one with another so: but I taking notice of their privacy, whenever I asked Charnock of it, he referred me to captain Porter. But withal he told me several times, that he believed it would come to nothing. The design was to carry the king alive into France, if they could; if they could not take him alive, then to assassinate him, and pretend it was done by a random shot. He told me also, that they had sent to king James for a commission to execute this matter, and to authorize them to carry the king into France, if they could take him; and then if they could not, they agreed to excuse themselves, as I said, by pretending that he was killed by a random shot. It should seem (as I understood) the commission was delayed a long time, and then they resolved to execute the design without a commission; and within a few days before the king was to go to Flanders, I was told all was ready. But then they wanted a ship to carry him off when they had taken him; and there met at the Rose tavern, as I remember, captain Porter and sir William Perkins; but I cannot tell whether Mr. Charnock was there or not. I asked them if they had concluded upon the matter; they told me it was concluded upon, and, as I remember, they told me captain Charnock, or Robinson (for he went by both names) was to have a recommendation to somebody at Deal; and so they were to hire a vessel, and I was asked whether I would go with him: I told them I would. But then the king went a little after for Flanders; and they had no time to complete the whole affair, and so the business was put off till the king's return this last winter.

Sol. Gen. Well, what say you to any thing since?

De la Rue. This year, in the months of November and December, Mr. King, the prisoner at the bar, told me, that there would be a major general come over from France, and that there was a man of quality about the town, that offered to disburse two or three thousand pounds, if king James would give order for it: and this was, as I suppose, to buy horses to be engaged in this matter, and he would tell me more a while after. A month or two after, he told me he was out of money about it, which could not be had: I was brought in by capt. Porter, and they communicated this to me about the latter end of January, or the beginning of the month of February; they told me there was a major general come over from France, and there were a great many people come over besides; and there would be something speedily put in execution, which would be for the king's service.

L. C. J. Who told you this?

De la Rue. Captain King. The next time I saw him, he told me he wanted a saddle with holsters, it was the 7th of February, on Friday night, for he was to go out of town with some friends, about something in order to this affair; he desired me to lend him one; but I had none, I told him, but I would write to capt. Porter, to procure one for him; and he

told me he was to go with Knightly, Durant, and others, to see whether the king went to Richmond or to Hounslow, because they were told the king had altered his journey from Richmond to Hounslow. He afterwards told me, he went with his friends, and the Sunday morning he comes to me, and told me, there was the rarest place for the execution of the design against the king, that was possible to be thought of; if they should have studied never so long, and desired a convenient place, they could not have had such another. It was within a quarter of a mile of the king's house at Richmond, in a lane that leads to the house, and so narrow, that the officers and the guard could go but very few a-breast, hardly broad enough for a-breast; and there was to be an ambuscade behind the park pales, and the other side was the river; and, says he, we will have all the pales sawed so far that when the king's coach comes into the place, the pales shall be broke down, and we will have a parcel of horse ready, that shall be sure to do the work with the guards; and when we fire, they shall take notice to make their attack. Durant desires to command this party; and they were to be dressed in country-men's habits, that they might be the less taken notice of: and he said 10 or 12 men on the other side would beat 100 of the guards in that consternation, especially we having the park pales before us to defend us. He asked me if I would be one of the ambuscade. I told him I had rather be one of those on horseback to secure the retreat, and I would rather attack the guards. It was late, and so King and I went home; and the next day I went to see captain Porter, when he was ill of the gout. This was Sunday, the 9th of February; we did go to Porter, and he was in his chamber, and two or three more, and they were talking of indifferent things: he asked for captain Charnock, and they said he was gone out; but he takes out capt. Porter into the yard to talk with him by himself; and what he said to him, I suppose was to tell him what he had told me before: says captain Porter to him, I have taken care of a horse for you; we will ride out on Tuesday next to see the place. Mr. Porter, and Mr. King, and, as I was told, Mr. Knightly went to Knightsbridge, and lay there all night: and the next day they went out of town to view the place. I was at Porter's lodging on the Monday, but I was told there by Keyes and his landlady, that he lay that night at the Swan at Knightsbridge, and was to go out the next day. On the Tuesday morning I was coming back from Kensington, which was the 11th of February, and when I was coming along the street I met with Keyes, and asked him where he was going? Says he, I am going to sir William Perkins with a lerrying trumpet; for it seems he was raising a troop of horse, as Porter told me afterwards; and within a little time afterwards, I saw captain Porter at the end of Norfolk-street, and he told me they would all be together at the Nag's-head about 7 or 8

o'clock. I went, and expected to be admitted, and asked if captain Porter was there; they told me he was above, but there were several other persons with him; and there was a coach at the door which had brought two Scotch gentlemen, of which I thought sir George Barclay was one, whom I heard to be in town. I desired to speak with captain Porter; they told me he was busy above in company, and could not be spoke with; by which I saw they were not willing that I should come there amongst them, which I took very ill. Captain King came out to me, and was talking with me at the door, and captain Charnock comes with another to the door in a coach: I saw him, but when, I suppose, he perceived me, he pulls himself back into the coach, as if he had no mind to be seen; but finding he could not avoid it, he comes out, and asks me if I would not go up stairs into the company? I told him, No, I hear they are busy, and because I was not invited up at first, I would not trouble them. I was then thinking of going to my lord Shrewsbury's office immediately, to get some messengers immediately to apprehend them; but then I thought I had not enough to discover their intentions, and make it out against them, but I should have one time or another. I did not see captain King till Saturday afterwards at 12 o'clock, and I was then at Charnock's lodging, to see whether he was gone out, that I might be able to give the king the better account; they told me he was at the Blue Posts in Spring-Garden: I would not go and dine there, but went home, and afterwards went thither; and King told me, the king did not go out that day; I told him that I heard so, and would come and see them after dinner. At this meeting at Spring Garden I saw Keyes was one, and Kenrick, and Sherbourn, and Bryerly, and two that I did not know. This was Saturday the 15th. On Sunday the 16th, I met Mr. King at St. James's-street, and we went thence to the Dog tavern, and there we supped together, and he told me sir George Barclay had brought over sixteen of the guards and two officers, and a brigadier, and a sub-brigadier; and he told me the day before, that he knew some of them, and was going to meet them; for they were *en Cachet*, as he called it in French, and did not stir abroad without leave, and were subsisted at the rate of 4s. a day, as the guards were here. He told me, he had a been lately with them a drinking. I asked him whither they went; he told me, to the Bear tavern in the Strand; and he told me Mr. Charnock and captain Porter had several conferences with them to contrive how to take off his majesty, to murder and to assassinate him. And he told me—

Char. My lord, I desire he may be asked whether he was at the Bear tavern with these men.

L. C. J. What he says about this matter, is what King told him.

Char. That is not evidence, my lord.

L. C. J. That is true, not to affect you, but only Mr. King.

De la Rue. Captain King told me besides, that Mr. Charnock did not argue like a soldier, and reflected upon him for it; for he said, he seemed to desire to have his post in as little danger as was possible. And for Mr. Porter, he did not approve of him; for he told me he had as much fat in his brains, as he had in his body. I remember those words he said; and that what he and Durant had proposed, was rejected, that was about the ambuscade: For it was said, that after all their consideration, sir George Barclay was not sure of horse enough to carry them off afterwards; wherefore they resolved to assassinate his majesty in the lane coming from Brentford to Turnham Green; and sir George Barclay was to command eight persons to assault the king, and those that were in the coach; and Mr. Charnock was to attack the guards in the rear; and one Rookwood, with a party that came from France, and captain Porter, in two wings, were to attack the two sides of the guards. I remember on Sunday night I asked him if he had a good sword, for I wanted one; and I said to him, where is your sword cutler? He told me, on the other side of the way; and he was sent for to bring a good sword, and I chose one that was but a little blade, which he thought would do best, and was ridiculing captain Charnock's sword, as being too broad, and of three or four fingers breadth. I liked his sword, and spake to the man to get me one like his; and he said a Tuesday, that he had sent him to my lodging, but I had not seen him. On Tuesday, the 18th of February, I went to him, and asked him, whether I should see him in the afternoon? He told me, no; for he was to go out with Knightly to buy arms. Shall I see you then at night? said I. I cannot tell whether you can or no, said he. I cannot remember any thing more that passed upon the 18th. But I spoke to Mr. Charnock, whom I met near his lodging in Norfolk-street, and desired to have a word with him towards the water-side: I asked him, how the matter in hand went; says he, I find people that were sanguine, and hot, and forward, are now grown cold: I believe the king has notice of it, and the thing has taken air; for he has not been abroad a good while. He was not abroad on Saturday, as he usually does go: and I hear that upon Friday night it was agreed in council, to take up several people. Said I, does the business go on? No, says he, I believe it is off, because we apprehend the thing has taken air; besides things of such a nature are not to be communicated to so many, nor delayed, both which are very dangerous; not above three people should know of it. Said I, how then would they get enough for the execution? if they be not acquainted with the design, they will never engage. Well, said he, I believe they are quite off of the thoughts of it; but you may depend upon the main business, that will be very speedily, which was the landing of king James. While I was talking, comes Bryerly from captain Porter; and after him,

came captain King in a coach, and asked me, if I would go home with him? I told him, no, I was not going home, but was going into White Friars, and I took my leave of them; and nothing passed more, that I remember, at that time. On Wednesday morning I went to captain Charnock's, thinking to learn something how matters went on; but he was closer, and more reserved than before. I asked him to lend me a good sword. He said he had none, but Mr. Porter had a good broad flaming sword, which I thought to be the sword that captain King mentioned to be his: And we had little talk that day; for I had business to do, and I left him pretty soon on the Wednesday. Next day after, I went to captain Porter's lodging, who was removed from Norfolk-street into Maidenhead-lane, to one Brown a surgeon's, and very few people knew where he was, but those that were of the party in this business; and I went into another room, into the dining-room, because his room had not a fire, and he came in to us, and I told him what I had heard from Mr. Charnock, that the thing was quite off. He told me, he heard nothing of it, but found all people that were concerned, as resolute for the execution of it, as ever they were.

Char. My lord, he speaks of what captain Porter told him; that is nothing to me.

L. C. J. No, it is not, nor will it ever be urged against you; it is but hear-say from another. Go on, Sir.

De la Rue. I stayed there but a short time: But, captain Charnock, since you speak of this matter, I only say, I told captain Porter what you told me, that you thought they were off of the business, and that it had taken air; and I asked him what he thought: says he, I know nothing of any alteration; I believe they are as resolute as ever they were: for they fully purpose, that if the king goes abroad on Saturday morning, we will have all ready. And he told me how it was to be done. He desired me to lie with him on Friday night, that we might prepare every thing against the next day: but I could not do that; and therefore he bid me send at nine, or thereabouts. I told him I would be at my lodging about that time, if he would send to me, to be sure about seven or eight o'clock in the morning. About that time in the morning captain Porter sends to me again; a servant-maid came to me, for the black that used to attend him, used only to go abroad at nights, and was not seen to go in and out a-days, for fear of being taken notice of; because, as I said, none but those that were of the party knew that he lodged there. I dressed myself, and went to captain Porter's lodging. He was in bed, but presently he rises, and told me in French, 'Toutes parties sont prests;' all things are ready: And when he was up, he put on his boots; and by and bye, in comes Mr. Kenrick; and after him in comes Mr. Keyes; and after him, Mr. King and Mr. Pendergrass: and captain King takes Mr. Porter into another room, and there they were

whispering a while, but I did not hear what they said; but King told me afterwards, he did not observe that I was in the other room. The question then was asked of Cranbourne, when he saw sir George Barclay? He said, he just came from him: And then captain Porter takes a pen and ink, writes down a list of the persons that he was sure of, and puts me down first. What, says Mr. Pendergrass, are you the captain? I told him, I believed I was in before the rest of the company that were there. Then captain Porter sends Mr. Cranbourne with the list to captain Charnock's lodgings; and in the mean time, when Mr. Cranbourne was gone, captain Porter told me, that Mr. Pendergrass was to be one of the eight under sir George Barclay, that were to assassinate the king; and now, says he, I am going to lend him a gun that will carry six or eight bullets. Says captain King thereupon to him, I hope you will not fear to break the glass windows. No, says he, I will have a hand or a finger in the business. By and bye came in news, that Chambers, one of the orderly men, as they called them that lay at Kensington to give intelligence, had sent word that the king was to go abroad, and the guards were gone out. Durant was to stay last, to see when the king went out. Chambers had been there all the week. Mr. Cranbourne came back, and told captain Porter, that Chambers had sent to captain Charnock, that the king would go out that day. At which all the company seemed joyful. Captain Porter told me likewise of several disappointments that they had, both as to time, and as to men; particularly that one major Lowick had engaged to bring two men, and that one of them had told his wife, that he was to mount for king James's service; and she went and cried after him when he went to the coffee-house; and so he was forced to abscond, and so we lost three: and also told me, that Kenrick said he had broke his arm; and when captain Porter asked for Sherbourne whom Kenrick had talked of, he said he asked so many questions that he durst not trust him: so that they had lost five or six in the whole: and there was one Plowden that they were disappointed of besides, whom they had very much reckoned upon. When Mr. Cranbourne brought back the list that captain Porter sent to captain Charnock, there were added to it several names, which captain Porter said were the names of the men that were to be under captain Charnock, and that it was his hand; and at the bottom there were the letters R. C. which I thought stood for Robert Charnock. The names made up about seventeen or eighteen: I told him, I thought there had been more. He told me, there would have been more, but that they were under some disappointments, as I told you before. He asked me to get him some men to supply the defect, and I proposed some names, to make him believe I was hearty in the business: We agreed to go to the Blue Posts in Spring Garden, and I went under pretence to get the

men, and came and told them, I had got them, and I found Mr. Pendergrass there, and I took Mr. Keyes thither, and Mr. Porter sent Mr. Cranbourne to captain Charnock several times; by and bye word was brought that Chambers had sent word, the king would not go abroad that day; upon which they all looked very blank: and Keyes came two or three times in, and went out again; he was several times up and down, at last he came and told us, the guards were returned from Richmond foaming; and he went down again to learn further intelligence, and within a little time came and told us, the king's coach was returned to the Mews Gate, and the people very much wondered what should be the reason that the king did not go a hunting for two Saturdays together as he used to do. They seemed to be in a very great consternation at this news, and captain Porter said he resolved to go out of town, and asked me if I would go: I told him, no; I had a suit in Doctors Commons, and I would go to my proctor and lawyers to consult about it. Then he asked Mr. Pendergrass to go with him, which he agreed to do; and captain Porter sent Keyes up to give the rest of the company an account, that there was no occasion for them then, and so they dispersed.

Char. Did I go out of town, can you tell?

De la Rue. Now you put me in mind, Mr. Cranbourne brought a message from you about that time to captain Porter, that sir George Barclay desired to speak with him at his lodgings. Captain Porter was then apprehensive of bailiffs meeting with him; and, says he, he knew this, I wonder he would not come to me. But he did not go to him, but resolved speedily to go out of town; and Keyes was to give an account where he was in the country, that, if occasion was, he might be sent for. This is all I can at present recollect, only I beg your pardon, I remember, there were several disloyal healths drunk in the company, at several times, as the restoring the late king, the health of the prince of Wales, the late queen, and the French king; and particularly, I remember, when the news of the disappointment was, Mr. Porter took an orange in his hand, and squeezed it, and gave it into the hand of the next person to him, whom he drank to, and began a health to the squeezing the rotten orange; and said, Though we are disappointed one day, I hope to have another: and Keyes was at dinner with them all the time, and every body drank it, I did not see any body refuse it, but it went from one to another quite round.

Att. Gen. Pray, who were there at that time?

De la Rue. All the company pledged the health, and Mr. Keyes was there.

Charnock. Pray was I there?

De la Rue. No.

King. Was I there?

De la Rue. No, there was none of the prisoners, but Mr. Keyes, who belonged to Mr. Porter's party: Mr. King for his part belonged to sir George Barclay's party.

Att. Gen. My lord, before we go to another witness, I desire to know whether the prisoners will ask this witness any questions.

Charnock. You say, there was a note of names sent by me to captain Porter; Pray, do you know my hand-writing?

De la Rue. I cannot say I have seen you write, or that I saw you write that: but I have seen your writing several times, and I believe it to be your hand.

Charnock. Why so, have you any of my writing?

De la Rue. I have received several notes from you, which I believe are your writing.

Charnock. But you do not swear, that they were my writing, or that this was my writing.

De la Rue. I tell you, you have sent several notes to me at several times, and you have owned the messages came from you, and I do believe it was your hand-writing, because it was like the rest: and captain Porter told me, it was your hand-writing.

Att. Gen. Pray did Mr. Keyes use to sit down at table with Mr. Porter?

De la Rue. Yes, in all companies he was treated as familiarly as a companion, and no ways as a servant; and dined and supped at the same table with the rest.

Att. Gen. What was done after that the news was brought of the king's not going abroad, and captain Porter resolving to go into the country?

De la Rue. When captain Porter was gone, the company broke up; and away goes I to captain Charnock, to see him, about four o'clock in the afternoon. When I came there, his landlady told me there was a great deal of company: but I desired her to go in, and tell him that I was there. She did so; and he sent and desired me to come in. I did so, and I saw several persons there. There was one Douglas, and one Trevor, and four troopers of my lord of Oxford's regiment, and a trumpeter that was his servant in Ireland, when he was a captain in Parker's regiment; I know captain Charnock was a great croney of Parker's, and he sent letters by me to him: I have seen some of the letters that Parker sent; and they were drinking the same healths as were drank before at the Blue-posts, to the restoring king James, the queen, the prince of Wales, and the grand monarch (as they called him) the French king.

L. C. J. Who was in company then?

De la Rue. Mr. Douglas, Mr. Trevor, four troopers of my lord Oxford's regiment, one White, one Lowthorp, and one Mason, whom I know when I see very well; Mr. Charnock, one day in the summer, asked me to go and drink a bowl of punch, which I was unwilling to do; but he must needs press me, and he carries me where Mason and Lowthorp were, at the George Inn in Piccadilly; whence we went to the Prince of Orange's Head, and captain Charnock spent in wine and other liquors upon them a great deal of money. This was half a year ago in the summer time, but I do

not remember that I saw those two, Lowthorp and Mason, afterwards, till the 22d of February.

Att. Gen. Is this all that you can say as to the prisoners?

De la Rue. This is all at present that I can recollect.

Att. Gen. Then for the satisfaction of the court and jury, give us an account when you first made a discovery of this conspiracy, and in what manner, and to whom.

De la Rue. The last year I had discovered it if it had come to a head, and been ripe enough to have been put in execution; I did then design to acquaint the king with it; but it coming to no head then, I deferred troubling the king with it: and now this year I designed (had the king gone out the 15th of February) to have prevented any mischief, but they had notice that he was not to go: but my way was, to have put them all into the king's hands, by getting two or three general officers to be acquainted with it; and dividing some of the guards into several parties in the lanes between Brentford and Turnham Green, and so have surprized them and their horses in their several inns that they were quartered in. But upon Monday the 17th of February, lest they should alter their resolution, and I should happen not to be acquainted how it was to be done, I went to a general officer of my acquaintance, that is, brigadier Lewson, to acquaint him with the matter; but he was gone out of town with colonel Fitz-Patrick and another: I went then to Durant's lodgings for a colour, and it was told me, he had been out all night. I went again to brigadier Lewson's, but he was not in town, and I left word for him, that the next day I would wait upon him, and desired he would not go out till I came to him, I went, he was not then at home, but I afterwards met with him, and acquaints him with this business, and begs of him to acquaint the king with it that day, which he told me he would. He asked me which way I purposed to put them into the king's hands. I told him the best way and safest for me, was for his majesty to go out on the 22nd, for the party that was to execute this design, were not to go out of town till the afternoon, to be at Brentford, when the king came back from hunting, and that they should have two or three troops of horse by parties to have seized them and their horses in the several inns and public-houses, where they were dispersed. He said, it was not safe to run that hazard, but he would offer it to the king, and let me know his mind. He sent to me the next day, and told me, he had acquainted the king with it, who desired to know who they were that were concerned in it; then I gave him the names of those that I knew, and where they lived. I dined with him on Thursday, and told him what had passed on the Wednesday morning between captain Charnock and I, and what Porter said about it on Wednesday night; and after dinner he said he would go again to the king and acquaint him with it; and that I should come to him on

Friday night, which was the reason I was not there with captain Porter, where sir George Barclay and they were together; for I went to the play to pass away the time. When I came home to my lodging, I found there were a couple of letters from the brigadier, to whom I went, and he told me, the king was desirous to see me: I told him I would wait on him to the king with all my heart. I went with him to Kensington, and was introduced to the king by my lord Portland, where I think I told the king what I have told the court now.

Att. Gen. What day do you say it was you discovered it to the king?

De la Rue. Brigadier Lewson acquainted the king upon the Tuesday night before, and that had been done the day before, if I could have met with him; but it was Friday night that I was with the king.

Att. Gen. Will they ask him any questions?

Char. No, my lord, I do not think that any thing he says against me is material at all.

De la Rue. My lord, I remember one thing more; that upon Tuesday night Mr. King told me he had my blue coat on.

Att. Gen. Have you any thing more to say as to Keyes?

De la Rue. Keyes was the only man that told me of the meetings.

Char. Where was it that you say I pulled myself back in the coach?

De la Rue. It was at the Nag's-head in St. James's-street, and he came out of the coach and asked me to go up; but I took it ill to be refused before, and because I was not invited up at first, I refused, and said, I had business elsewhere, and went away.

L. C. J. Will you ask him any more questions?

Char. No; yet I think I would ask him one question more. You say, Sir, I carried you once to the George Inn in Piccadilly, where there were Lowthorpe and Mason: are you sure it was at the George Inn?

De la Rue. Yes, sure.

Char. Are you positive it was the George Inn?

De la Rue. I believe so, I took it to be that inn.

Char. You did swear it positively, that it was the George Inn before.

De la Rue. I saw those two men since, which was on Sunday the 23rd, at Kensington, and they said they did quarter at the inn in Piccadilly, where you carried me to them.

Char. Pray, whereabouts is the George Inn in Piccadilly?

De la Rue. The inn that I speak of is about the middle of Piccadilly, upon the left-hand.

Char. There is but one George Inn in all Piccadilly that ever I heard of, and that is at the further end, there is no such sign in the middle.

L. C. J. He is not positive as to the sign, but as to the place.

Char. I appeal to every body, if he did not

swear before positively, that it was the George Inn in Piccadilly.

De la Rue. I do say, it was to an inn in Piccadilly; and Lowthorpe told me on Sunday the 23rd at Kensington, they were quartered at an inn in Piccadilly, I take it to be the George Inn, if it be not the George, I know not what sign it is; but I think it is not very material what the sign was.

Char. Yes, it is all material to us; and I think it is very material for every man to take care how he forswears himself.

L. C. J. No, it is not forswearing himself, when he is not positive as to the sign.

Char. But I hope every body considers, that he did swear it was the George Inn, and there is no such inn there.

De la Rue. This I did not think of, to take so much notice of it then, as to mind what the sign was; it was you carried me thither.

Char. It was your interest to mind every particular; for, according to your own words, you have been a trepanner half a year before.

De la Rue. I have told you already, I intended never to have been an evidence; but to put you into the king's hands, and prevent the execution of the design, and I begged of the counsel to be excused from giving any evidence, but I could not by any means get myself excused.

L. C. J. Will Mr. King ask any questions?

King. No.

L. C. J. Well, what say you, Keyes, will you ask him any questions?

Keyes. My lord, he says I drank the health to the squeezing of the Orange, and the other healths: I was not in the room while any such healths were drunk, nor did I sit down while I was there, nor do I know any thing of the horses, upon my word, that he speaks of.

Att. Gen. Then if they have done with him, there is a noble lord, whom he has mentioned, as being present when he discovered this to the king, who we desire may be examined touching that matter: we must humbly pray my lord Portland, that he will please to be sworn.

L. C. J. Hold my lord the book, and swear him. (Which was done.)

Att. Gen. My lord, I humbly ask your lordship this one question, whether Mr. De la Rue did make any discovery of this matter in your presence to his majesty, on Friday the 21st of February.

E. of Portland. Yes, he did.

Att. Gen. Your lordship has heard what he said now: was it to the same purpose?

E. of Portl. Yes, to the very same purpose, and he did it before he went in to the king to me, being brought to me by his own desire: it was all the same in substance as he has told you now; and afterwards he was brought to the king on Friday night, and there he said the same things.

Sol. Gen. This gentleman did it not to save his own life, but the king's. Our next witness, my lord, is Mr. Pendergrass. (Who was sworn.)

Att. Gen. But before we go on to another evidence, I would ask Mr. Porter one question, and that is, what is become of the list which you spoke of?

Capt. Porter. I burnt that list.

Att. Gen. Why did you so?

Capt. Porter. Because I thought the thing was discovered, and it was not fit to have such a paper remain.

Sol. Gen. Mr. Pendergrass, pray will you tell my lord and the jury what you know about this matter, how you came to be acquainted with it, who were concerned in it, and when and how it was to be done?

Capt. Pendergrass. My lord, about the 11th of February last, I was sent to by captain Porter where I was in the country, to come to town; the 13th of February I met him at the Blue Posts in Spring Garden; we dined there, and he told me of a design that was on foot to take sway the king's life, and that sir George Barclay, and other officers, were come on purpose out of France, in order to execute the same. I was very uneasy when he told me of the thing, but I said nothing till I had an opportunity of waiting upon my lord Portland, which I did as soon as I could, and acquainted him with the whole matter of the design, and desired him to acquaint the king: This was upon the Friday night, which was the 14th, and he told me the king had a mind to speak with me, and afterwards my lord Portland carried me into the king's closet, where the king asked me some questions. I told him what I knew of the design, but desired to be excused from naming any persons, because my intention was only to prevent such a barbarous action, and I was resolved not to be a witness. The king promised me I should be safe, and pressed me to name them, and assured me I should not be forced to come in as an evidence; upon which I did tell all that I knew, and went out of town with Mr. Porter as resolving not to be an evidence; but being satisfied, after we were taken, that Mr. Porter, who had engaged me in it, had himself discovered, and accused me, I thought myself discharged from any obligation of honour in concealing it, and am willing to give an account of any thing that I know.*

* "Mr. Pendergrass hearing that Mr. Porter, who engaged him in the plot, had, by an allowable stratagem, been frightened into a discovery, and accused him, he thought himself discharged from any obligation of honour in concealing it; and therefore afterwards came in as an evidence at Charnock's trial." Ken-
nett.

The following strange story concerning this person is related by Boswell in his *Life of Johnson*:

"General Oglethorpe told us, that Pendergrass, an officer in the duke of Marlborough's army, had mentioned to many of his friends that he should die on a particular day. That

Att. Gen. We know you do it voluntarily, as you did it at first honourably, and therefore, Sir, we desire you would please to give an account of your knowledge in the matter.

Pendergrass. My lord, as I told you before, the 11th of February I was sent to by captain Porter into the country, where I was with Mr. Bryerly, to come to town; accordingly the 13th, which was the Thursday, I came to town with Mr. Bryerly, and found captain Porter at the Blue Posts in Spring Garden, and we dined there. There was Keyes, and Bryerly, and Porter, and I in company, where he acquainted me with the design. We had no further discourse that day; the next day we dined at the Rose Tavern in Covent Garden, where there was King, Bryerly, Cranbourne, Porter, and I dined together.

King. Pray, was it by way of rendezvous or set meeting?

L. C. J. Holt. Look you, you must stay your time before you ask any questions of the witnesses; you shall be heard, when your time comes, as fully as you desire. Go on, Sir.

Penderg. This was Friday the 14th of February, we had some discourse about the matter; captain King and captain Porter went away, and then I went to my lord Portland's, and was by him introduced to the king. The 15th I came to captain Porter's lodgings, and he was getting ready, in expectation of notice whether they should execute the design that day or no. While he was getting ready, I goes to the Blue Posts, where was Kenrick and Sherbourne, and Mr. Bryerly, and there we were drinking a glass of wine, and in comes Durant, who was an orderly man that lay at Kensington to give intelligence; and Bryerly directed him to capt. Porter's lodgings to carry the intelligence which he brought, that the king intended to go out that day; upon that he went away to his lodging, and capt. Porter came a little time after, booted, to the Blue Posts, and there he dined; within an hour or

upon that day a battle took place with the French; that after it was over, and Pendergrass was still alive, his brother officers, while they were yet in the field, jestingly asked him where was his prophecy now. Pendergrass gravely answered, "I shall die, notwithstanding what you see." Soon afterwards there came a shot from a French battery, to which the orders for a cessation of arms had not yet reached, and he was killed upon the spot. Colonel Cecil, who took possession of his effects, found, in his pocket-book the following solemn entry:

"[Here the date.] "Dreamt — or — Sir John Friend meets me" (here the very day on which he was killed was mentioned). General Oglethorpe said, he was in company with col. Cecil, when Pope came and enquired into the truth of this story, which made a great noise at the time, and was then confirmed by the colonel." Boswell's *Life of Johnson*, vol. 1, p. 374, 4th edition of 1791.

two after capt. Porter came in, Mr. Charnock sent a note to capt. Porter, to tell him, the king did not go that day, and so there must be counter orders; capt. Porter told me it was his hand; the note was signed R. Robinson, and he shewed me the note, and acquainted me, and the rest of the company, that they were disappointed that day, since the king did not go; there we dined, and drank a bottle of wine. The next time we met, there was Mr. King and Mr. Keyes, and Mr. De la Rue, at Mr. Porter's lodgings; this was Saturday the 22d, in the morning; there we had some discourse of the matter; and capt. Porter, upon notice from capt. Charnock of the king's intending to go abroad, had sent a list of his men, and received back a list of capt. Charnock's; and capt. Porter, and De la Rue, and we went to the Blue Posts to dine, where we had an account afterwards, that the king did not go, and so there was another disappointment; and a little after Keyes came in, and said, the guards were come home all in a foam, and the king's coaches come back to the Mews. Capt. Porter then thought all was discovered, and says he, I will go into the country; Mr. Pendergrass, will you go with me? With all my heart, said I; so we sent Keyes to get our horses ready; we lay at Epsom that night, and from thence to another place we sent the next day, where we lay till Thursday morning, when capt. Porter, Mr. Keyes and I was taken together, the place was called Leatherhead, in Surrey; whence we were brought up to town, and have remained prisoners ever since.

Att. Gen. Which of the prisoners were there present upon the Saturday the 22d, at capt. Porter's lodgings?

Pendergrass. There was captain King and Mr. Keyes.

Att. Gen. Pray was there any discourse about a gun, and who was to have it?

Pendergrass. Capt. Porter told me there was a musketoon that he had would carry 6 or 8 bullets, and I should have it, being to join with sir George Barclay to set upon the king's coach, and directed me to be sure to shoot some of the horses to stop their course if they seemed to drive furiously away; and Mr. Cranbourne was the person that carried the messages from Mr. Charnock to Mr. Porter.

Sol. Gen. Do you remember, Sir, that Keyes said the guards were come back?

Pendergrass. Yes, and that they were all in a foam, and the coaches were come back to the Mews gate; and one of my lord of Oxford's regiment told him there was something extraordinary muttered among the people, upon which they concluded it was discovered.

Att. Gen. Will the prisoners ask him any questions?—*Char. King and Keyes.* No.

Att. Gen. Then I must beg the favour of my lord Portland to give himself the further trouble of acquainting the court how this gentleman behaved himself in reference to this discovery.

E. of Portland. My lord, it was as he has acquainted you. This gentleman came to me upon the Friday night, and told me of it; and then upon the same Friday night, which was the 14th, I think the night before the first time that it was to have been executed, and declared his abhorrence of such a barbarous business; and he told me his design of coming into it, and keeping company with them, was to save the king's life by acquainting me with it, and discovering it, which he would do upon a promise that he should not be used as an evidence, nor pressed so much as to name names; which promise I made him, and the same promises were made him that day seven-night, when I carried him to the king. But the king pressing him to name their names, assuring him he should be safe, and not forced to be an evidence, he did then name the names under that promise from the king.

Att. Gen. Pray, my lord, who was by then besides your lordship?

E. of Port. My lord Cuts.

Att. Gen. We must desire my lord Cuts will please to be sworn. [Which was done.]

Sol. Gen. Pray, my lord, will you please to acquaint the court and the jury what happened at that time.

L. Cuts. My lords, I was in the king's closet that same Friday night, when Mr. Pendergrass was brought in there: 'twas, as near as I can remember, between twelve and one o'clock at night; nobody was present but myself with the king, when my lord Portland came in with this gentleman: all that he said to the king at first was, that he had a discovery to make of a design to assassinate his person, if that his name might not be made use of, nor he forced to be an accuser or a witness; and therefore desired to be excused if he said no more; then desiring the king not to go out the next day, but to take care of himself, because there were some persons had resolved to assassinate him coming home; but begged to be excused from naming names, for he said he would rather die than betray his friend, and he thought it enough that he had saved his majesty's life. It was above half an hour before the king could persuade him to name names, and he would not, 'till the king had given him his word and honour that he should not be obliged to be a witness; and then he did name the names*. Afterwards, when captain Porter

* The following particulars respecting the disclosures of Pendergrass are related by Blackmore:

"The second, who discovered this villainous plot, was Mr. Pendergrass, who knew nothing of the barbarous business till Thursday the 13th of February, for that day he came to London out of Hampshire, being sent for by captain Porter, who imparted to him the design in hand, of assassinating the king, and endeavoured to engage him in it. Though Mr. Pendergrass was exceedingly startled at such a horrid proposal, he seemed to comply, and promised

and Mr. Pendergrass were taken, as my station obliged me to give orders, and require intelligence, and assist at the securing and examination of the conspirators, I happened to see

to make one of the party; but the very next day in the evening he went to the earl of Portland, not knowing that captain Fisher had been with him before on the same errand, and told him that he came to reveal to him an important secret, namely, a design against his majesty's life: he told the earl that indeed he was a roman catholic, but that he did not think that any religion could justify so great a wickedness, and therefore from principles of christianity, and probity, he thought himself obliged, by revealing this matter, to prevent the king's falling into the hands of the conspirators. But he acquainted him at the same time, that the conspirators were his friends, and, that from one of them he had received great obligations, and therefore though he thought himself bound in duty and conscience to make this discovery, to preserve his majesty's life, yet he likewise thought himself under obligations of honour and gratitude, not to betray his friends: and therefore declared, his resolution was not to make known their names, or to appear an evidence against them. He then desired the lord Portland, as he tendered his majesty's life to prevail with him not to go to Richmond on the morrow, assuring him, that the conspirators had prepared all things to assault him in his return. It ought to be taken notice of, for the reputation of this gentleman, as to the credibility of his testimony, that the mere abhorrence of such a villainous design was the only motive that induced him to make it known to the court.

"His majesty being made acquainted with the discovery, which captain Fisher and Mr. Pendergrass had made to the earl of Portland, received but little impression from it; the obstruction he met with about giving credit to what they had related, proceeded not only from his fearless and unshaken temper, and the opinion he had received of the English honour and bravery, which make men abhor a vile and bloody action, but likewise from the princely goodness and benignity of his nature, from which he entertained too good thoughts of the worst of his enemies; and besides, it was not easy for him to believe, that there could be found in a kingdom, that owed to him the preservation of their religion, liberties, and every thing that is dear to a free people, any such monsters of ingratitude, as would attempt to take away his life in so barbarous a manner, which he had freely and frequently hazarded for their sakes; this appeared to him so unnatural and incredible, that he was with great difficulty, and not till he was overborn with importunity, prevailed with to lay by his design of going to Richmond on the Saturday, and to remain at home in his palace at Kensington. These things I likewise had from the mouth of the earl of Portland.

VOL. XII.

them before they were carried into the council, and presently knew Mr. Pendergrass to be the person that was with the king that Friday night; I had a great compassion to see gentle-

"The next man, who voluntarily gave information of this conspiracy, was Mr. De la Rue, who declared that he had frequented the company of the conspirators, and made himself intimate with them, on design, when this horrible production was almost ready for the birth, by a timely discovery to make it abortive. He applied himself to brigadier Lewson, and acquainted him with the intended villainy some few days after captain Fisher and Mr. Pendergrass had been on the same design with the lord Portland, but not one of the three was in the least acquainted with the intentions of either of the other to reveal the conspiracy; and though Mr. De la Rue gave his information without knowing that captain Fisher and Mr. Pendergrass had done the like before; yet his story so fully confirmed that of the other two, agreeing exactly with them in all the material particulars, that his majesty, notwithstanding his unshaken constancy, and his great aversion for the reasons above-named, to believe this execrable plot, which so nearly concerned his own life, was by this concurrent testimony of la Rue, at last persuaded of the truth of it.

"On Friday, the 21st of February at night, his majesty was pleased to admit Mr. Pendergrass and Mr. De la Rue severally in his presence, and heard them relate what they had told the lord Portland before, concerning the conspiracy. Mr. Pendergrass discovered the plot in general, to prevent his majesty falling into the hands of the conspirators, but withal declared, as he had done the week before to the lord Portland, that it was his positive and settled resolution, not to mention names, or at any time to become an evidence against them.

"He continued in his resolution with great steadfastness, until his majesty used such convincing arguments, as prevailed with him to recede from it.

"The king told him that he had indeed shewn himself a man of probity and honour; that he had great obligations to him for the timely care he had taken to reveal a design that so nearly concerned his life; but he shewed him withal, that unless he went further in his discovery, and made him acquainted with the names of the conspirators, he would not put him into a condition of preserving himself against them: That the detection of the treason in general might indeed render his majesty suspicious of all men, but would be no security against any that intended to take away his life; and that the conspirators might change the method and order of their design, as well as the time and place of execution; and therefore that Mr. Pendergrass by discovering the conspiracy, while he concealed the names of the conspirators, would fall short of his own intention, which was to preserve the king's life, it being impossible that his majesty could be in safety,

4 Y

men and officers, whom I had some knowledge of before, in such a condition, and I told them naturally what my opinion was: Mr. Porter did seem sorry for what he had done, and inclined to make the king that atonement for his fault which he has now done. When I came out and told Mr. Pendergrass this, and that Mr. Porter had named him, and owned the whole matter, I only gave him my opinion upon it, that I thought he was discharged from any obligation of friendship: and he seemed then inclined to do the same likewise that Mr. Porter had done.

Sol. Gen. Swear Thomas Bertham. [Which was done.] Pray do you give my lord and the jury an account how long you have known Mr. Charnock to be engaged in this conspiracy: tell your whole knowledge as to him.

Bertham. The 8th or 9th of February last I was crossing Covent-Garden, I lit upon one Mr. Trevor, who is now in Newgate, and he told me he was going down to Mr. Charnock's lodgings, and that he heard him say he wanted to speak with me; I told him he had no business with me nor I with him, that I knew of: but he prevailed upon me to go with him, and when we came to Mr. Charnock's lodgings, he met me in the entry.

Sol. Gen. Who did?

Berth. Mr. Charnock did. He told me he wanted to speak with me, and took me into a back room, because he had company in his own; and he told me, the king, that is, king James, was a-coming, and there was a piece of service to be done before he could come, and if I would assist in it, it would answer my expectation. I asked him what was to be done? He answered, You must only go abroad to take the air, you will see several of your acquaintance there. I desired to know what was to be done? He said it was to cut off this spark, or to take off this spark, I can't tell which, and then the king will come home quietly.

Att. Gen. Who were to cut him off?

Berth. The party that I was to meet when we rode out to take the air.

L. C. J. Who did they say they were to take off?

Berth. He said we must take off this spark, or cut off this spark, I can't tell which, which I understood to be the king.

Att. Gen. How long had you known Charnock?—*Berth.* By times, seven years.

unless the desperate undertakers of this design against him, were made known and secured. By this just reasoning of his majesty, Mr. Pendergrass was at last overcome; and being convinced of the absolute necessity of going further in this discovery, to enable his majesty to provide for his safety, he wrote down the names of many of the conspirators, which he delivered to the lord Portland; but not until his majesty had given his honour that he should not, unless he pleased, be used as an evidence against them. This information I received from the earl of Portland."

Mr. Cooper. How came you acquainted with him?

Berth. We were in the army together; he was a lieutenant in col. Parker's regiment, and I was a trooper there then.

Sol. Gen. What discourse was there between you and Charnock, after you heard there were warrants out?

Berth. Sir, I have not yet done with what passed at his lodgings. He asked me if I would accept of being one in the business: I told him I could not engage in it, for I had disposed of myself otherwise. So we came out of that little room, and he desired me to come into his room and drink a glass of wine: There were three or four gentlemen that I did not know; and then there was one Mr. Chambers and Mr. Trevor, and Mr. Lee, which Mr. Chambers fetched afterwards in there.

Att. Gen. He would not be engaged there, because he had otherwise disposed of himself: Indeed, he was engaged with sir William Perkins.

Berth. After I came in I observed great whisperings among the company, and frequent calling out of Mr. Charnock for private discourse; but there was no other particular discourse about this matter that night.

Sol. Gen. Pray when did you see Mr. Charnock again, and where?

Berth. At another time, which was the 22nd of February, I met him at Lincoln's-inn back gate; and meeting me here, he called me aside and took me within the inn upon the paved-stones; we took a turn there: He told me warrants were out against us, as he heard, and we had as good, if I would come to his lodging, go out to Kensington and do the work at once and take him off, and then we shall be quiet, and have the king peaceably here. I am sure he cannot say that I do him a word of wrong in what I have said, he knows it all to be true.

Mr. Cooper. Has any body else engaged you in this matter? Do you know one Lowick?

Berth. If that be necessary, I will tell it. But this is all that I know of any thing of the prisoners; only Mr. Charnock did ask me as to Mr. Trevor, what I thought of him, whether he might trust him? I told him he might do what he pleased.

L. C. J. Holt. Mr. Charnock, will you ask him any questions? for his evidence relates only to you.

Char. No, I think not. Pray did I send for you?

Berth. I met Mr. Trevor, and he told me, he was coming to your lodgings, and that you desired to speak with me. And when I came, you told me yourself you wanted to speak with me: Indeed I knew no business you had with me, or I with you.

Att. Gen. We have one more witness, and that is one Mr. Boyse. (Who was sworn.)

Sol. Gen. Pray, Mr. Boyse, will you give an account when you were spoke to about this design, and by whom?

Boyse. On Friday the 14th of February, I went to visit Mr. King, and he was the first that ever told me of the business; it was in his own chamber, he told me there was a great undertaking in hand, and he had put my name into the list, and if I would make one, I should have a horse; and he asked me if I had any boots; I said, no. He desired me to see if I could get any, and to meet him in the afternoon at the Rose Tavern in Covent Garden; but in the mean time he bid me go to Mr. Knightley, and he would inform me further. I went to Mr. Knightley, and I came to Mr. King again in the afternoon at the Rose Tavern, and he desired me not to be out of the way the next day, but to be at my lodging, and he would come or send for me; and I had 20s. of him to buy boots, and he still referred me to Mr. Knightley: when I came to Mr. Knightley, I was told there was nothing to be done that day: but I was desired to be always in the way, for the business would soon be over. This is all the discourse that day. After that I met Mr. King several times, who still referred me to Mr. Knightley, and when I asked him for my horse, he told me I should have one allotted for me time enough; and when this thing was done we should be happy: But he never told me it was to take off the king.

Att. Gen. Pray what did you understand was to be done?

Boyse. I did believe I should know further of it; for I would not have engaged till I did know. But he did not tell me it was to take off the king, or what it was. This, to the best of my memory, is what I know of the matter.

Att. Gen. Pray when did you come from France?

Boyse. He told me indeed several were come from France, and that the king would land very speedily.

Att. Gen. But when did you come?

Boyse. I came the beginning of June last.

Att. Gen. Do you remember nothing about sir George Barclay?

Boyse. Yes, he told me sir George Barclay would command the party, and that there were about forty or forty-five, that were concerned in the design.

Sol. Gen. Do you remember nothing else?

Boyse. No, truly, I do not remember any thing more concerning Mr. King.

L. C. J. Holt. Mr. King, will you ask him any questions? for what he says relates only to you.—*King.* No, my lord.

Att. Gen. Then we have done, my lord; we rest it here till we hear what they can say.

L. C. J. Holt. Mr. Charnock, the king's counsel have done all the evidence they design to give, and now is your time to make your defence.

Charnock. My lord, I have taken some notes of the evidence, and made some remarks, which must be my defence; and I shall take them in order of time as they were given: The first is captain Porter; and the main evidence

he hath given against me, is my informing him that sir George Barclay was come from France, with a commission all written with king James's own hand, thereby authorizing us to raise war against the person of king William. But then he says, at the same time, I told him I never saw it; and I know not how I should; for it is impossible to see a thing that is invisible, a thing that never was in being; and to suppose that ever there should be such a commission under the king's own hand, and writ with his own hand, is such a contradiction to all sense and reason, that no rational man can be guilty of; and therefore I hope the court and the jury will consider of it, and reject it all as a foolish, idle, nonsensical fiction and story. It is very well known that king James has always had, and still has, notwithstanding his present sufferings and circumstances, his ministers of state about him, in how slender a condition soever they may be, or be represented to be. He has my lord Middleton as his secretary of state, he has been all along with him, and it is not supposable that he should put himself to the trouble of writing any commissions with his own hand, when there were others enough to do it for him, and he need only sign the top of it James R. much less is it supposable, that he should give any such commission as this that they speak of, and writ it all with his own hand, and that sir George Barclay should bring it over. This is such a nonsensical, ridiculous story as ought to be rejected with scorn and contempt, and is only fit to be laughed at: I hope every body will look upon it as such, and think that such evidence is very incredible.

My lord, another thing that I observe out of captain Porter's evidence, is this: He says, he and I was to command a party; he knows what he himself intended to do, but I am sure I know of no party that I was to command. It is all a dream, a mere dream and a fiction. He thinks fit to acknowledge his own guilt of a very bad crime, and he may accuse himself as long as he will, but I think that will not make me guilty of any such thing, only because he says so: He does not say what men they were, or who they were; and it cannot be an overt act, unless he can tell who they were. He says sir George Barclay and I met at the Sun Tavern in the Strand, and at several other places where this matter was discoursed of, and a great many were supposed to be in the assassination, to the number of forty; but he does not mention any thing then of its being discoursed who they were to be: and is it supposable, when the design he talks of was so near being put in execution, it should not be known who should engage in it? For my part, I deny that ever I was with him at any place where sir George Barclay, or any body else, talked of any such thing. When I was examined before the council, my Lord Keeper asked me when I saw the duke of Berwick? I thought it not fit to answer that question, because I knew the duke of Berwick was out.

lawed here, and I might accuse myself if I acknowledged having been in his company, though it were at St. Germain's. But I said I never believed he was in London, and I do not believe he was. I heard that colonel Parker was in England, but I did not see him; and as to the major general, and other officers they talk of, it is all a jest to me; and it is no way at all to be believed or credited, that because other men have notions of castles in the air, I must be so foolish as to believe such impertinencies too. He says I sent him a list of men, and written with my own hand, and subscribed with the two letters of my name; he does not swear he saw me write it, and similitude of hands was never thought good in criminal causes; and I believe it was never looked upon for law, that it should be a good evidence for a man to swear such a writing was another man's own hand, unless he says he saw him write it, and kept it in his own custody till it should be produced as evidence, and produce it in open court, and not let it go out of his custody till then. All these things, I apprehend, the law judges necessary to make a good proof of a writing to be of a man's own hand; but here is nothing of that here: here is nothing produced, nor does he say he saw me write it; and so I think it all goes for nothing, a mere idle invention of his own. My lord, upon this evidence there is not any positive proof of my doing an overt act, by buying of arms or horses, or writing letters, or any thing of that nature; and I hope if I speak irregularly, your lordship will pardon me; I am no lawyer, and I have no assistance but my own nonsensical notes to depend upon for my defence. My lord, he speaks about horses that were to be provided; but there is no proof of that; I never bought any horses, or borrowed any; nay, nor is there any proof, that while this bloody assassination that he owns himself to have contrived and carried on, was on foot, I had not so much as a horse any where; and that I should be so vain to get men to engage in such an expedition with me, and have never a horse myself, is very strange. The conspiracy, he says, was depending a long while, and whenever it was to be put in execution, we were to go expeditiously to work, lest it should be discovered; and it is very strange then that I should never have provided the least thing in the world to do it with! neither arms, nor horse, nor any thing: For there is no proof of any such thing against me, but only talk, as he is pleased to swear, to take my life to save his own: And I hope your lordship and the court will declare to the jury, that here is no evidence of any overt act against me.

My lord, there is another thing he says against me: he says he had a note from me by the name of Robinson, to countermand the orders upon the 15th: my lord, the truth of that would depend very much upon the producing of that note, then it would be seen whether it was my hand, and what it contained, and what it related to: for

my part, I utterly deny I ever sent any such note wherein there was a word of the king, or of any fact of this nature that was to be committed, or any thing relating to it, if it were true that I had written any note to him at all; and I hope the jury will consider, and the court will direct them so to do: for I know not that they are any more skilled in the law than myself, and therefore I hope your lordship will give them ample and true directions, what is law and what is not law, and what is evidence and what is not evidence; and this cannot be evidence to affect me at all, there being nothing that doth appear, or is produced.

My lord, he says, there were four that were to go with sir George Barclay, that were to be appointed out of each party; he does not say I named any, nor does he name any himself; but it seems they knew what was to be done; and truly if any thing was to be done, they knew it themselves (and nobody else that I know of) who swear to save their lives, and get a reward. If the four were to be out of the party, which he calls his own, he knows them best, and I believe the party was his own, and the plot his own too, and nobody's else; he does not say that I appointed any one, he only says there were four to be appointed out of a party, which party was in *Nubibus*, and so is the whole design, unless it be in his head, framed there by his own invention, for it only exists there that I know of.

My lord, these observations I make upon captain Porter's evidence: the next witness is Mr. De la Rue, and he is a very good evidence indeed, if hear-say be to be believed; he says I was very shy of discoursing with him about it, that I told him it would come to nothing, without saying what would come to nothing, not that the plot would come to nothing, for there was nothing at all spoken of any plot, much less of a design to assassinate the king. This is all that he says, as to me, of his own knowledge, all the rest relating to me is but what captain Porter told him. But to begin with the beginning of his evidence, he says one thing which is very odd, That at the Rose tavern, the last year, there was a consultation about carrying king William away into France, in a vessel alive, and that sir William Perkins asked him, whether he would go along with me to Deal, to procure a vessel to carry the king over: he might as well have asked him to go with me to Constantinople, or any other place in the world, as to Deal, and about any other employment, as that. A pretty sort of thing, that I should go to Deal to hire a vessel to carry the king over into France; I that know no sea-man, or any master of a vessel at Deal, that I should be employed to hire a ship before the design was formed, as he says it was not come to an head. If we had got the prince of Orange into our power: if we had king William in our power, how was it possible we should ever have carried him to Deal? I cannot but think any one would believe us madmen to entertain such a chimera in

our heads. What nonsensical stories are all these, that we should carry king William to Deal, and I hire a ship to transport him into France! I hope the jury, and all that hear it, will consider what ridiculous stuff these men talk of, as evidence against men for their lives. Then he talks of my coming in a coach to the Nag's-head door, where I was very shy of letting him see me, and afterwards, when I came out, asked him to go into the company; but he was angry that they had denied to admit him before, and so would not go up: what a stange sort of a contradictory story is all this! here was a conference, it seems, appointed the night before to be at that place, when captain Porter, and captain King, and Mr. Knightley were just come from viewing the ground, and were to make their report; and Porter told him of it, and yet they would not admit him, and I was shy of him, and yet asked him to go up: what contradictory nonsense is this! It must needs be looked upon as improbable or impossible to be true, that I should ask him to go up into such a company, where such a mighty conference was to be had about such a great transaction, when I had shewn myself apparently shy of him, by falling back in the coach, as being unwilling to let him see me; I hope the jury will consider the self-contradictoriness and improbability of such evidence. Then there is another thing, and that is, what he says captain King said, he did not believe it would come to any thing, because he did not like me as being no soldier, for I was for keeping out of danger, and having an easy post: if he means I had no mind to be in a plot, he was in the right of it; for no man in his senses would ever be engaged in any such desperate designs, where there is such apparent destruction in view: so I cannot apprehend what there is in that of any objection against me, or any proof that I had a hand in this plot, because I desired to keep out of danger. It was said, that I was to have attacked the king with sir George Barclay; but captain Porter says, we were to be together, to attack the guards; and both cannot be true, nor indeed is either of them true, but a figment and invention of their own: then he says he asked Keyes for a good sword, and he told me I had a very good one: 'Tis true, I had a sword, I always wore one, but it does not follow that that was to be employed upon such an enterprize as this. And then he tells you a story again of captain Porter's having a broad flaming two-edged sword. But what is all this to the purpose? does this prove any thing against me, that I consented to, or was engaged in, any such bloody design as this? he saith that on Wednesday he came to me, and asked me of the affair, how it went on; he doth not say what the affair was, nor he doth not say it was about killing the king; nor indeed is it probable it should be, for he says I was always shy of him, and that he could never get any intelligence but from captain Porter. He saith I told him it was a thing would not admit of being delayed,

and that only three people should know such a thing; but still he doth not tell you what this thing was, and therefore I do not apprehend how this should affect me, as evidence of my intending to assassinate the king. He saith he had it from captain Porter, that Mr. Chambers was an orderly man, a word I do not understand, to convey intelligence to me; and that Durant was an orderly man, to convey intelligence elsewhere: still this is all but what captain Porter told him, and there is no proof that I sent Mr. Chambers any where. Chambers, I acknowledge I know, he is a poor man, and my Lord Chief Justice Treby, I suppose, cannot but remember that he was in prison, and tried before him upon the account of piracy; I must needs say, I thought him an honest man, because he had served with me in Ireland: I knew he was in great want, and therefore gave him his diet and lodging; there is no proof that I furnished him with money, but I acknowledge I did with bread and drink, to keep him from starving; that I think was an act of charity, but it cannot be interpreted, nor is there any proof to warrant it, that it was with any ill design, or that I gave it him to hire him, or engage him to any such purpose. My lord, they would make it as if the persons that were intended to be employed in this pretended plot, were to be regular troops, and to have courts of guard, and to be disposed of into quarters, and this was to be done by these orderly men: I profess I know not what to make of it, it is such a medley, a fancy, and a chimera, that it is perfectly unintelligible, whether these were to be general officers, or private centinels, or what. Then, my lord, he saith Cranbourne brought a list from me to captain Porter, with R. C. at the bottom: 1st, That he does not prove that it was my list, nor doth that R. C. being at the bottom of the list make me a partner in this conspiracy. Then he saith, that Cranbourne came to the Blue-posts, as from me, to acquaint them of the disappointment, because the king did not go out that day: surely, my lord, I need not trouble you with saying any thing to this, for it is all, as to me, but hearsay; and what am I concerned in that which other people talk amongst themselves? Though they do use my name, how can I help that? My lord, he saith himself that he intended to discover this conspiracy a year ago, but the thing failing then, which how ridiculous it was I observed before, he let it alone for that time; but when I met him at the Nag's-head door, and he was so angry for their not admitting him into their company, which was three weeks before this design they talk of was to be executed, he had a mind to go to the secretary's, and get warrants and messengers to apprehend us; and he saith he hath often come to me, to ask about the affair, as he calls it; but I was still reserved and shy, and told him nothing would come of it. From all this I would observe that I have very good reasons to look upon him to be no evidence, not only for the same reason that I objected against Mr.

Porter, that by his own acknowledgment he is *particeps criminis*, but his coming to me after he resolved to discover, plainly declares, that he set himself to be a trapper, and no trapper can, in the judgment of any honest or understanding man, be a credible person, as an evidence to take away any man's life: I am sure what he saith of my shyness to converse with him, and his own frequent attempts to converse with me, shews plainly he was willing to trapan me; for so he himself saith. He came to me several times, and took me aside, to ask how the affair went on, but he did it only to enable himself to make the better discovery; which makes him ten thousand times worse, than if he had only gone at first and told what he pretends he knew, and afterwards forbore the company. Besides, my lord, as to trapanning, I have read in a book of sir Robert Atkins, that to be *particeps criminis*, proves a person to be a bad man, and consequently not so credible, especially if it can appear the witness has trapped the prisoner into the committing the crime; then the witness will appear to be guilty of a far more higher crime than the prisoner, and therefore ought not to be believed as a credible witness against the prisoner, for he is a credible witness that has the credit of being a good and honest man, which a trapper cannot have; and this trapanning proves withal, that the trapper did bear a spite and malice against the person trapped, and intended to do him a mischief, and designed to take away his life: shall such a one, says he, be a credible witness, and be believed against him? God forbid!

My lord, as to Mr. Pendergrass, who is the next witness, I do not take myself to be much concerned in all he saith. I think I have seen him but once of a great while, and that was on the Wednesday or Thursday before I was taken up; but, my lord, I have this to say to his evidence, I desire your lordship to observe I was not in the proclamation, though he was: they took occasion to have me secured as a colour, or to save expences, I suppose, while they themselves went out of the way, to have their names put into the proclamation; that somebody might colourably take them, and get the king's money. All that he saith of me, is, that Cranbourne brought messages from me: one time I writ a note, signed R. Robinson; another time I sent a list subscribed R. C. and that Porter shewed him them both; but all this is but hearsay still out of the mouth of Porter, and can be no proof at all against me. He saith, upon the disappointment he and they went to Epsom, which to me seems a very remarkable thing; for if he say true, it is plain, this was before by him discovered at court; and to me it shews, that he had a strong design of getting money, and taking away people's lives upon that account; and that captain Porter was in the same design: for De la Rue saith, captain Porter asked him to go with them, as well as Pendergrass. Now, can it be supposed, that these three should agree to go together, unless they were in a combination, as

it appears they now are? And I cannot but think, the court and the jury will think it reasonable to believe; for if I was in a plot of such a nature as this, and should hurry out of town after I had discovered it, with three or four of the people that were concerned in it, and some of them afterwards pretend to be discoverers too, nobody in the world can believe but they contrived the thing amongst themselves, and went out of town only for a colour, that they might be put in the proclamation, and pretend to be taken, to entitle themselves to the reward.

L. C. J. Really, Mr. Charnock, I am loth to interrupt you in any part of your defence, but I do not understand what you mean by this, and I very willingly would understand you if I could.

Char. My lord, I say, I look upon it, that they were all combined together in a design to get the king's money, and take away our lives, that Porter should desire them to go with him into the country, and particularly Mr. Pendergrass, who discovered this to the king, and then that he should agree to go with him.

L. C. J. Truly, I do not understand the force of your argument; that because upon the supposed discovery capt. Porter went to Epsom, and Mr. Pendergrass went with him, therefore this must be a design between them to get the king's money, I cannot any way see how that must follow.

Char. Pray, my lord, to what end should he run out of town, upon the apprehension of the discovery, and with captain Porter too, when he actually had got the king's promise that he should be safe, and not be a witness, unless it were a combination between them, in order to set up as witnesses against us, to get the king's money?

L. C. J. I'll tell you why he was willing to go with captain Porter; because he had not a mind that the discovery he had made, should be any way known to have come from him; for you see how unwilling he was to name names, and so kept captain Porter company still, as his friend, resolving not to be an evidence against him.

Char. Well, my lord, after all, I hope, what he saith cannot be looked upon as any evidence against me; because whatsoever he saith relating to me, is about the notes and messages that he saith were brought to captain Porter, and all of it can amount at the utmost to hear say from other people's mouths. My lord, the last evidence that I apprehend relates any way to me, is that of Mr. Bertham, and he talks of what I should say to him upon the ninth of February, that I should take him into a back room into my lodgings, and there tell him, that there was something in hand for the restoring king James; but there was somewhat to be done first to take off the spark, or I do not know what, nor do I believe any body else doth know how to make any thing of it. It is a very improbable thing, that this matter which was to be so great a secret, and which I should

say, was not fit to be communicated to above three people at once, I should send for a private trooper, for he was no otherwise, to communicate so great a matter to him; besides that I cannot, nor, I believe, can any body else tell what to make of the words, "Taking off the spark," how to construe that to make it an evidence of an intention to kill the king. It might be probable I might say there was a noise that king James would come, for it hath been in the gazettes and the public prints, that there was such an expectation, and preparation for it on the coast of France; but it is not probable, I am sure it is not true, that I should say there was something to be done first, for the 'taking off the spark.' Evidence of a thing of this nature ought to be plain and clear, and distinct: He doth say nothing that I talked to him of killing the king or of assassinating him, or of my asking him to be one in any such thing, and that I furnished him with arms, and an horse on any such design, but only that he might ride out, and take the air, and there he should meet with some of his acquaintance: What unaccountable loose stuff is all this! it is very strange, my lord, that if I liked the man so well, as I must do, if I would send for him to communicate a thing of this nature to him, that I should not put it into a method, that he might be one with us in the execution of it: But there cannot be any thing inferred of that nature, for which we stand accused, from any words that he saith were spoken. My lord, he doth say, indeed, that he told me, that he had disposed of himself otherwise; but that is no more certain, nor can be referred to any particular thing, than the rest. He might dispose of himself to a friend, he might dispose of himself to his wife; but what is all that to this purpose? And he might, indeed, if king James came, dispose of himself to assist him, or to oppose him, or to let it alone; but all this is nothing to the business for which we are here to be tried; it is all loose, idle, impertinent talk, and not at all to the purpose. And then he saith, that afterwards, I met him at Lincoln's Inn back gate, and took him into Lincoln's Inn, and told him, there were warrants out, and we had as good do the business presently. My lord, I do remember I met him at Lincoln's Inn gate, and it was upon Saturday the day before I was taken up, and it was about 12 o'clock at noon, and I did hear there were warrants out, but there never was that intimacy between him and me, that I should desire him to come to my lodging, or that I should support him in any sort. My lord, I have made a few remarks to your lordship and the jury, upon the evidence; I am sensible I have given the court a deal of trouble; but I hope you will consider it is for my life, and my all; and I hope you will be of opinion, that the evidence produced against me is frivolous and weak, and that the witnesses have a very bad cause of it, since all that they talk of, if it were true, is only a discourse, and they are forced to supply in words, what they want in fact.

L. C. J. Have you any more to say, Sir?

Char. Yes, my lord, I desire to take notice to the court and the jury, that the business of bare words was never looked upon in law as an overt-act to prove a man guilty of high-treason, nor that several persons met together doth prove a conspiracy. These persons proving that I met with them, doth not prove that I was concerned in the assassination, nor that I consented to any such thing; besides, my lord, I am taxed in the indictment with buying arms and horses for this business; but there is not one word of it proved, or of my riding out to view the ground, nor any thing, that I was to be concerned about this villainous act. My lord, if I had bought any arms, that had not been an overt-act of itself; it must be proved first that I bought them with such an intent to employ them about such a business; and it neither is, nor can be proved, that I furnished any body with horses or arms: and therefore the bare buying of arms of itself, as far as I am informed of the law, would be no proof of an overt-act. To prove an overt-act of treason by the buying of arms, it must be proved that I declared some way that I bought them with such an intent, or else it is no proof at all; but now if you have no evidence that I bought any arms at all, I look upon it, that there is no possibility to make that an overt-act. If you please, my lord, to bear with me to give you the trouble of reading some short notes, which I have taken out of some law-books about overt-acts.

L. C. J. No, the court will not think it any trouble: make your defence as well as you can, and take your own way.

Char. My lord, I hope you will allow what hath been collected out of the books of law as to overt-acts: there is Hale's Pleas of the Crown, is positive in it, That an overt-act must be alledged in every indictment, and proved; that compassing the death of the king by bare words, is no overt-act. Now, if bare words be no overt-act, why then all the conspiracy that is here proved, supposing all to be true that is said, it is no overt-act; for it is all but words still. And bare conspiring is no overt-act, according to my lord Coke's opinion in his Third Institutes; and the utmost of all that any of them prove against me is, that I did say so and so, which is but bare conspiring. Pray, my lord, let me know upon what law it is that I am indicted and tried, I suppose it is upon 25 Edw. 3.

L. C. J. Yes, you are, and only upon that statute.

Char. My lord Coke, in his Third Institutes: saith, The open act must be manifestly proved. If divers conspire the death of the king, and the manner how, and thereupon provide weapons, powder, poison, send letters, or the like, for the execution of the conspiracy, or preparation be made by some overt-act to depose the king, or take him by force, or by strong hand, or imprison him; these are sufficient overt-acts, to prove the compassing the king's death. But by this it is plain, that bare conspiring is not.

treason, as wanting a sufficient overt-act to declare the intention. Now, my lord, I say, that in all this evidence that hath been given against me, there is not one overt-act proved of my providing arms, or sending letters, or the like. And the same page of the same book, the Third Institutes, chap. High Treason, upon the words 'prove able Attaint,' it must be by overt-act, it must be upon direct and manifest proof, not upon conjectural presumptions or inferences, or strains of wit: so that the strongest presumptions upon the whole earth will never be able to make any overt-act, without plain and manifest proof. And, my lord, I do insist, here is not plain and manifest proof, or any overt-act, but only presumptions in the whole scene of the thing. I must beg the favour of the court as to one particular thing: your lordship, no doubt, knows the law very well. I am here an ignorant man, unable to defend myself by the forms of law; but I hope your lordship and the court will not let me suffer any damage upon that account. You are always presumed to be of counsel for the prisoners; and I look upon it as assured, that you will do that justice to persons in our circumstances, as truly to instruct the jury how they shall behave themselves in relation to this matter that is now upon enquiry before them. Particularly, my lord, I desire they may be told plainly and truly, what is proof of an overt-act, and what is not; and when your lordship sums up the evidence, you will tell the jury directly and plainly, what is legal evidence, and what is not; and then what is sufficient proof of any one overt-act or species of treason; and that you would not leave it to the apprehension of the jury, what they do believe, but inform them really and truly what is legal evidence, and what of that sort hath been given to-day. My lord, here is a strange sort of thing, a conspiracy, which, considered in the general, hath neither head nor tail; how many there were to be is uncertain. In the indictment is said, there were forty men to do this fact upon the king in his coach, and for attacking the guards. Can it be supposed, that any man in his senses would do such an act as this, without respect to have security for himself and his family or those he is concerned for? I know not how great wits these people be in other things, but I am sure they shew no wit in this, I look upon it to be so desperate a thing. The guards are at least treble the number, and better appointed; and that forty should go to assault treble the number; and in divided bodies too, that were only to mix fury and malice with resolution, to be torn in pieces by the mob upon an apparent visible disappointment. And when we had done this, and made this attempt, where were we to go? We had no asylum that we can hear of, nor castle or fort to retire to, nor none that were to back or assist us; and I am sure no man in his wits would undertake a desperate attempt without assurance of a retreat. If I was resolved to kill any man, I would propose to myself some place, to which I might repair for

shelter and safety when I had done. If, then, we were in our senses, it cannot be imagined we should ever engage in so apparently destructive a design. We ought rather to have been confined to Bedlam, than any other place, if we could be thought guilty of so much rashness and folly. My lord, I pretend not to make any particular reflections upon these gentlemen that have given evidence here; but only I must take leave to say in general, that there are none of them, but that if they have had any fortunes in the world, their circumstances as to that matter are now much altered; and if any persons will be evidence against others for their lives, in hopes to repair those fortunes, and concerning matters in which they were engaged themselves in, as they do acknowledge; and if it be true, it must be through the desperateness of their fortunes, it is the most barbarous and inhuman sort of evidence that ever was given by any that ever had any sense of honour, and must be a base reflection upon any who pretend themselves to be gentlemen: and I hope the king will think them upon that account very little deserving credit. My lord, I hope your lordship will please to consider that what I have offered is but what my own sudden thoughts could suggest to me out of the confused little remarks I have been able to make upon the evidence; and it is the more confused and immethodical, because I could have no counsel to assist me. I would only put your lordship in mind, once more, of what I earnestly desire and insist upon from your lordship, that you would tell the jury plainly and truly what evidence it is the law requires to convict any person of the crime for which I stand accused; what things are necessary to make up that evidence, what is a legal proof of an overt-act, and what overt-acts have been plainly and manifestly proved against me in this case, and not leave the construction of the evidence to the apprehension or inclination of the jury. This is all the favour that I have to beg of the court, and I hope I need not doubt the justice of the jury.

L. C. J. Have you done, Sir?

Char. Yes, my lord.

L. C. J. Then what say you, Mr. King?

King. My lord, I must insist upon a great many things that Mr. Charnock hath said. But as to what relates to myself, captain Porter saith, I went with him and Mr. Knightley to view the ground where this design was to be executed. Truly, my lord, I did go abroad with captain Porter and Mr. Knightley; but it was merely to take the air, and no other thing. Truly, my lord, I have not taken any notes of the evidence, nor have I any counsel to assist me, and so I am not very capable of making any defence.

L. C. J. Well, have you any more to say?

King. As to Mr. De la Rue, he doth not pretend to say, I did ever tell him of any thing of a design of destroying the king; and as to the sword he speaks of, he knows I always wore one, and ever had one.

L. C. J. Well, is this all you have to say?

King. And as to Mr. Pendergrass, he saith he saw me at the Rose-tavern in Covent-Garden, where we discoursed something of the matter; but he tells you not what that matter was, nor what the discourse was. And as to Mr. Boyse, he doth not tax me with any design of killing the king: nay, he saith, I did not mention any such thing to him. And as to the matter of an overt-act, what is an overt-act and what not, and what is good proof of it, and what not, I must refer to your lordship and the court.

Char. My lord, I beg your pardon, there is one thing I forgot to offer to your lordship; there is no place laid in the indictment, nor no set number of men ascertained.

L. C. J. At present you are out of time, for that you might have spoke to it before the evidence was given, or you may speak to it after the verdict is brought in, if there be occasion.

Char. My lord, I am ignorant in the forms of law.

L. C. J. If you will observe any thing out of the evidence, you may; now is the time.

Char. My lord, I think the evidence is inconsistent with the indictment: for the indictment doth say positively, that there were horses and arms bought and provided. Now if this be an essential overt-act, as I apprehend it is, according to my lord Coke, to prove the compassing the king's death, then there hath been no evidence to support this indictment; for there is no proof of the buying of any horses or arms.

L. C. J. They tell you there were forty provided.

Char. My lord, I have taken some notes, as well as I could, upon reading of the indictment; and in the first place it is said, that it was agreed there should be forty horsemen armed of us, Robert Charnock, Edward King, and Thomas Keyes; which I take to be nonsense and impossible.

Att. Gen. But there is, 'and others' in the indictment too.

Char. It is 'Quadragint' Homines eques-
tres de ipso Roberto Charnock.'

L. C. J. And divers others, to the jurors unknown. May not they make forty? Thirty-seven and you three will make forty.

Char. That 'divers others' is so uncertain, that no one can tell whether it be five or five thousand; and I know not what will make an indictment void, if uncertainty will not.

L. C. J. But your time of exceptions to the validity of the indictment is not now; we are now only upon the trial of the fact.

Char. My lord, I was advised by my counsel, that if I could find a flaw in the indictment, I must mention it, and take the advantage of it before the summing up.

L. C. J. You were not well advised; for after the jury is sworn, we are only to have regard to the fact; and we are now upon the trial of the fact; and the only thing we have under consideration upon the fact and the evi-

dence is, Whether upon this evidence that hath been given, you are guilty or not of the fact that is charged upon you in the indictment?

Char. My lord, I crave your pardon, and I hope you will take no advantage of my ignorance, not being used to these proceedings.

L. C. J. As to what you said at first, that there was no overt-act proved because there is no proof of buying horses or arms; it is true, that is one overt-act laid in the indictment, and there is some evidence given of it; but what that evidence will amount unto will be a farther consideration by and bye.

Char. There was another observation, my lord, that I have made upon the indictment, that it is uncertain upon the word *tunc*; there is no time assigned, nor no place: pray what time doth this *tunc* refer to?

Sol. Gen. When the king went out.

L. C. J. But these things are not proper now, I tell you we are upon the fact. Mr. King, have you any more to say? because Mr. Charnock interrupted you.

King. My lord, if there be any objection that Mr. Charnock hath made, would be of any advantage to me, I hope you will let me be heard by my counsel, that I may have the benefit of it.

L. C. J. I tell you, that is not proper now; you may have the benefit of any objection of that nature, if there be any occasion, after the verdict: now we are only considering the evidence upon the issue, Guilty or Not Guilty; and you are now to apply yourselves to that.

King. My lord, I think I have answered all the evidence.

L. C. J. Well then, Mr. Keyes, What have you to say for yourself?

Keyes. My lord, all that I have to say is, I was a servant to captain Porter, and I did nothing but by his order.

L. C. J. Is that all you have to say?

Keyes. Yes, my lord.

L. C. J. Then I must tell you, No man is such a servant, that the commands of his master can excuse him for committing high-treason.

Keyes. I did but obey his commands.

L. C. J. But I tell you again, No man is so much under the command of his master, as that he ought to obey him, if he command him to commit high-treason. It is proved you bought horses, and he told you upon what design, and you engaged in it.

Keyes. I did not hear any thing of it, my lord. My master was pleased to jest with me several times, and he might say a great many things that I did not much regard.

L. C. J. You were by when your master, as you call him, promised Mr. Pendergrass his musketoon, and Mr. King told Pendergrass, he hoped he would not fear breaking the glass windows.

Keyes. Indeed I do not remember any such thing.

L. C. J. And there are several other parti-

culars sworn against you: but have you any thing more to say?

Keyes. Nothing; but that I did what my master ordered me to do.

L. C. J. Have you all done, then? If you have any more to say, you must speak it now, because you cannot speak after the king's counsel have summed up; they must have the last word. Have you any witnesses to call, or any thing more to say?

Char. No, my lord, we have nothing more to say, but leave it to your lordship entirely.

Solicitor General. May it please your lordship, and you gentlemen of the jury, I am of counsel in this case for the king against the prisoners at the bar, and I think the matter hath been fully proved as Mr. Attorney at first opened it; and there was a design of an invasion on this kingdom from France, and of an insurrection within this kingdom, to abet that invasion, and as an inducement to both, of a barbarous and abominable assassination upon the person of the king, and that the prisoners at the bar had an hand in this conspiracy.

Now, Gentlemen, I must tell you, that for the two first parts of this design, the invasion and the insurrection, we have given you no other evidence now, but some short hints, that such a thing was intended; and we did it purposely for this reason, because the prisoners, though they were concerned too in those other parts of this Plot, yet they are not now indicted for that matter, but only for a direct conspiracy to murder and assassinate the king. We have abundance of witnesses to prove the other parts at several times against a great many as well as them; but we confine ourselves now to this particular, as it stands charged against these persons in the indictment.

Gentlemen, There is an overt-act alledged in the indictment, as it by law is necessary to do, to prove the treason; which is, compassing the death of the king; and it is by law a good overt-act, that they did at such a place, that is to say, the parish of St. Clement's in the county of Middlesex, on the 10th of February last, consult and agree to carry on such a design: now it is not material, as my lords and judges will tell you, in point of law, to prove all the several consultations to be in that parish, nor to have been upon the day alledged in the indictment; for if it be any day before or after the times specified in the indictment, so it be before the indictment preferred, and if it be at any place within the county wherein the indictment is laid, it is sufficient; the thing that is material to be proved is, Whether they did meet upon such a design before the indictment, within this county?

This design, Gentlemen, we in law call high-treason; the highest crime that our law, or the law of any other government, takes notice of: and it very well deserves to go under that name; for it tends to subvert the very foundations of the government, without which no subject is safe, and to bring all into

confusion and desolation, by taking away the life of the king, who is the head of this government; which life the law makes sacred above all others, because without that he safe, there can be no safety to any particular person.

Gentlemen, We have proved this bloody conspiracy most fully against all the prisoners at the bar: I will not take up so much of your time, as to repeat every particular of the evidence that hath been given; but only shortly remind you of what hath been materially said against each of them by the witnesses that have been produced.

Against Mr. Charnock, there is first Mr. Porter, who hath sworn, that he and others met, and consulted about this design, agreed upon it, and on the ways and methods for carrying it on; and he names the places where, and the times when those consultations were had: then there is Mr. De la Rue, who saith, he asked Mr. Charnock, how the affair went on? and he answered, He was afraid it would come to nothing. That shews he was willing it should come to something, though perhaps he might be fearful whether it would take place or no. Mr. Pendergrass saith, Mr. Charnock sent a note to Mr. Porter to countermand the orders for the 15th, subscribed by the name of Robinson; but that is only a concurring evidence to that of captain Porter, who said before, he had such a note; but Bertham tells you, that he asked him if he would be one in the design to take off the spark; and that after he heard warrants were out he would have had him joined in the putting it in immediate execution, and assured him there would be safety in so doing.

Against Mr. King there are the same witnesses, Mr. Porter and Mr. De la Rue, who tell you of the discourses at captain Porter's lodgings, where Mr. Pendergrass was likewise, who tells you the times, viz. the 15th and 22d of February last, the days when this wicked design was to have been put in execution, and there they consulted about carrying it on. Mr. Boyse likewise tells you of the discourse he had with King; he would not indeed directly tell him, what the design was, but Mr. Boyse did suspect what it might be; for Mr. King told him sir George Barclay was come, and Mr. Boyse should have a horse, and make one, and it would soon be over.

Then for Keyes, there are three positive witnesses against him; there is his master, as he calls him, captain Porter, who swears, that Keyes knew of it, and consented to it. Mr. Pendergrass saith, Keyes was one that met at captain Porter's the 15th of February, to put the design in execution that day. De la Rue tells you, Keyes was in the chamber at that time, and in other places consulting about it, and so must needs know of it, and consent to it. So that, gentlemen, if you believe these witnesses, as I see no reason offered to the contrary, we have most manifestly proved upon them all three the matters charged in the indictment.

As to what they speak of the witnesses being trappanners, and swearing them out of their lives to save their own ; it is plain the prisoners designed to trapan the king out of his life, and some the prisoners would have trappanned to have joined with them in that design, who honestly and honourably discovered it, and now the prisoners' danger is a safety to the nation.

Gentlemen, They argue against the belief of this conspiracy, from the improbability that any person should be so desperate to engage in so wicked a design. Truly, had this been a matter that had been only talked and discoursed of once, that might have been the better alledged ; but when there have been so many meetings at several times and places, and such methods taken for the putting this conspiracy in execution, and after a disappointment one day, put off to another ; nay, and as it hath been proved it hath been a project that hath been transacting several years, from one year to another, and for all this made as manifestly evident, as proof by testimony can make it ; the objection of improbability will soon vanish into nothing ; and I hope you will think, as I believe all the world doth, or will after this trial, that there hath been such a barbarous, bloody conspiracy, as in the indictment is alledged, and that these persons are guilty of it, and that you will give your verdict accordingly.

Mr. Conyers. My lord, I would only add to what Mr. Solicitor hath said, some few observations that have been omitted of the evidence that hath been given against the prisoners.

The treason charged, is a design of assassinating the king's person ; the overt-acts laid in the indictment are, several meetings and consultations in order to the bringing it to effect, and the providing men and horses to put it in execution.

This charge we have fully proved against the several prisoners at the bar, by two witnesses at the least, and it is manifest that they were all concerned in the several meetings and consultations for the carrying on that design.

As for Mr. Charnock, Mr. Porter's evidence is very full as to his providing arms and horses ; and there is besides, Mr. De la Rue, who though he met him at the tavern, and not being admitted at first, took it ill, yet afterwards at two meetings he did discourse with him about it ; and Bertham gives an account, how he would engage him in it.

As to Mr. King, there is not only captain Porter, who testifies, that he dined with him the 14th of February, where they did discourse of this intended assassination, but De la Rue likewise, that said, there was a meeting appointed for Porter and King, and another, to go and take a view of the ground ; and the prisoner himself owns he did ride out with them, but he would have it only to take the air ; captain Porter tells you, it was to see which was the most convenient place, and that the place pitched upon was the lane between Brentford and Turnham-green.

And for Keyes, there are two positive witnesses, captain Porter and Mr. De la Rue, that he was at the Blue-posts, and at Mr. Porter's lodgings when this matter was consulted of, and particularly that he came and gave an account of the disappointment the second day, upon the guards coming back.

Besides, Mr. Porter gives an account in general, of several that were to provide arms, horses, and men ; and Mr. Bertham proves that Mr. Charnock told him, the design was to take off the spark, and then the time would come that king James would come back quietly. Mr. Boyse swears, King told him on the 14th of February, that he was to go out upon a design the next day, and that he should have a horse provided ; which next day, the 15th, is by all the witnesses agreed to be the first time appointed for the assassination ; and Mr. Bertham adds, that he met with Charnock the 22d, who told him warrants were out, and it was best to go and do the business presently, and desired him to come to his lodgings, and he went to his lodgings and found several persons there.

Char. He does say no such thing, Sir.

Att. Gen. He does say that Mr. Charnock desired him to come to his lodgings.

Mr. Conyers. As I apprehend him, he says, he went thither in the evening on the 22d.

Att. Gen. He says, Mr. Charnock would have had him come, but he did not ; the time that he was at his lodging was before.

Mr. Conyers. My lord, if I mistake, I beg pardon of the court, and of the prisoner too.

L. C. J. As I take it, there is no coming to his lodging at all, but the 9th or 10th of February.

Att. Gen. He says the 9th of February he met with Trevor, who carried him to Charnock's lodgings, and then he would have engaged him in the design of taking off the spark ; the meeting of the 22d was afterwards in Lincoln's-Inn, and there was no going to the lodging that day.

Mr. Cooper. My lord, I am very loth to take up any of your time ; but I would beg the favour to observe two or three passages relating to this matter, which have not been observed yet ; and shall only mention so much as I think has been omitted.

The defence that has been made, has been principally by Mr. Charnock ; and upon his defence, it seems, the rest do depend ; therefore I would beg leave to make some few remarks upon the defence that he hath made. He says, That all the evidence is but hearsay, as to him, and no overt-act of his own proved ; but, my lord, I question not, if the evidence be looked into, it will appear sufficient not only to prove him guilty beyond contradiction of all that is charged upon him in the indictment, but particularly, that he was the principal agent (under sir George Barclay) in carrying on this whole conspiracy.

For captain Porter tells you, That Charnock first acquainted him with sir George Barclay's

coming over with the commission; that Charnock brought sir George Barclay to the lodgings, where they both lay; that they had several meetings, at which he was always present, and a main promoter of the design: that he agreed to find a principal quota of the persons that were to be concerned; particularly, that he was to find eight men, and seemed always most zealous for the execution of it.

Then as to Mr. King, it is plain, that Knightley, and captain Porter, and he, went to view the ground; and Mr. De la Rue tells you, what report King made of that view; that with great joy King acquainted him, they had found the rarest place in the world for the execution of their design, a wood hard by the king's house at Richmond; and then he opens the whole manner of the ambuscade, and the design.

Charnock. It is at the liberty of any body to swear what they please; but I hope the jury will consider the nature of the evidence.

Mr. Cowper. Mr. De la Rue tells you further, something more than hearsay, as to Mr. Charnock; that he asked Mr. Charnock about the matter, what was like to come of it? And he answered him, that he feared the success of it; for that a thing of such a nature was not to be trusted to above three. Which could not refer to the intended invasion and the insurrection; for as to that, it is plain from the nature of the thing itself, that it must be communicated to a great many, or else they could not be ready to assist in it: and therefore it is evident, it was the assassination which he was in haste to have executed, saying, it had been delayed too long, and that was as dangerous as communicating it to too many.

My lord, I shall make my words good to you, and rather than take up your time in making repetition of what has been said, I will chuse to break my method, and omit what might be further observed: It is true, it was a mistake of the day as to Bertham's evidence of his going to Charnock's lodging, but that is not material; for it is in proof he did go to his lodgings the 8th or 9th of February, and there Charnock told him that king James was a-coming; but there was a service to be done first, to take off the spark, and then the king would come in quietly; if that design took effect, it would answer his expectation: he was to ride out to take the air, and meet some of his acquaintance, and after all was over, we should be very happy. The words indeed were something dark, but yet the intent and meaning of them are pretty manifest, not only from the words to take off the spark, but because this action, whatever it was, was to precede the invasion of king James with the French forces, and was to be done in order to it, and therefore could not be meant of it, nor of joining with it. My lord, I shall trouble you no further, but submit to your direction.

L. C. J. Holt. Gentlemen of the Jury, these three prisoners at the bar (viz.) Robert Charnock, Edward King, and Thomas Keyes, stand indicted of high-treason, for conspiring, com-

passing and imagining the death and destruction of the king, and that in a very bloody and barbarous manner, by way of assassination; and the Indictment charges them, that they did meet and consult with divers other traitors unknown to the jurors, and there did resolve upon this assassination, and horses and arms were prepared and provided for the execution of it.

The question, gentlemen, that you are to try is, Whether these persons who stand now thus accused, are guilty of this crime or not? And you have heard a very long evidence; five witnesses have been produced, and they have given upon this occasion a very large account of the whole transaction, which I will observe to you as briefly as I can.

In the first place, gentlemen, you are told, how there had been a design forming, even for some years, for the restoring of the late king James, and the depriving and deposing of this king; it seems it was a design before the business of Cape la Hogue, which you remember very well was in the year 1692, about the time of the burning a great part of the French fleet by admiral Russel; but this design, though it met with several disappointments, yet did not die, it had its ebbings and its flowings, sometimes it was higher, and at other times lower; and in winter was twelve months it began to be more vigorously prosecuted than at any time before since the La Hogue business, and then there was a resolution framed of attempting the person and life of the king, which appears by captain Porter's and Mr. De la Rue's testimony. And great hopes were conceived amongst them, that it might be effected before the king went over into Flanders; but it seems they wanted a commission from abroad, (which they thought necessary as an authority for them to act under) which not coming in time, the king went over to Flanders, and so for that time the execution of it was deferred.

Gentlemen, after the king's return from Flanders, the prosecution of this design was resumed, and intimation was given, that a commission was brought over by sir George Barclay from king James, which was to make war upon the person of king William, who was called therein, as you may suppose, the prince of Orange: and you are told by captain Porter, that at that time, he and Mr. Charnock lodged together in one house in Norfolk-street, and that Mr. Charnock told him sir George Barclay was come with such a commission from king James, and imparted to him the design of assassinating and murdering the king, and that would be the readiest way to bring home king James: he asked captain Porter, whether he would engage himself in the matter. It seems Mr. Porter did freely and readily engage in it, and was in good earnest; and therefore there were several meetings at several places, in order to consult and contrive how they might bring it to pass.

Gentlemen, you are further informed, that there were several meetings at the Globe tavern in Hatton-garden, another at the Nag's-

head, in St. James's-street in Covent-garden, and at the Sun tavern in the Strand, and that two of the prisoners at the bar, Mr. Charnock and Mr. King, with divers others, were at those meetings, and Keyes was at several of them, and there it was agreed and resolved, that the king should be murdered, as the best way to bring in the late king.

This being settled and resolved upon as fit to be done, the next consideration was, in what manner it might be effected; and two ways were proposed, one by way of ambuscade on the other side of the water, near the king's house at Richmond; the other in the lane that leads from Brentford to Turnham-Green, upon the king's return from Richmond, some evening; for it seems it is usual for the king to go to a house he has on the other side of the water, to divert himself once a week upon the Saturday, and to return in the evening.

These two places being proposed, the one on this, the other on the other side of the water, there was a difference in opinion among the conspirators, which of the places would be the best and most proper: and in order to settle that matter, it was resolved upon, that some persons should be sent to view the ground in both places, and make their report to the rest; and the men agreed upon, were captain Porter and Mr. Knightley, to whom Mr. King added himself, and accordingly they did go out of town together to take a view of these places.

[Here the Court was interrupted by Mrs. King, the prisoner's mother, who, in a very outrageous, violent manner, got into the court; but being removed, the Lord Chief Justice proceeded.]

L. C. J. Gentlemen, I was saying that this view was taken by those persons that undertook it; and the night of that day they had viewed the places, upon their return, they made a report to their accomplices, and thereupon it was resolved to relinquish the ambuscade, and that the attack should be made in the lane that leads from Brentford to Turnham-Green.

The time that was fixed upon for this execution was Saturday the 15th of February: there were two men that were appointed to lodge at Kensington, whom they called orderly men, a title that they gave them: these were to give notice at what time the king and the guards went out; the one was to give notice first of the guards going, the other was to give notice when the king went: when notice was brought them that the king was gone abroad, the conspirators were to be ready to go after in small numbers, and were to be quartered and dispersed in the several inns about Brentford and Turnham-Green, to be gathered into the several bodies, upon notice of the king's return; when the king came over, then they were to make the attack in this manner: captain Porter and Mr. Charnock, with one Rookwood, were to attack the guards, and sir George Barclay, and his party, were to come

up to the king's coach, and fire into it, and kill the king, and every one that was in it; and of that party Mr. Pendergrass was designed to be one, and he was to have had a musketoon from captain Porter, that would carry seven or eight bullets: these conspirators, and the persons that were to be concerned, were in all forty, or some few more in number.

But, by great Providence, this bloody design was discovered, as was told you, by one of the witnesses, Mr. Pendergrass, a day or two before it should have been put in execution; and so his majesty did forbear going out that Saturday the 15th. But they having notice that the guards were gone, and after that receiving an account that the king did not go, it very much alarmed these conspirators; but notwithstanding this, as you have been told, they were resolved not to lay aside the prosecution of this design, but were rather bent upon executing it the next opportunity that should offer itself; for which purpose divers of the conspirators did meet together, and did consult whether it was fit further to proceed; particularly upon the Friday the 21st day of February, at the Sun-Tavern in the Strand, divers of them met, and there they had discourse of the matter, and were troubled at the disappointment, and were resolved to pursue it, and for that purpose agreed to be in a readiness upon the next day, and as soon as they should have notice that the king was gone from Kensington, they would prosecute it in the same manner in which they had formerly agreed.

It should seem, some of the men that they had engaged were gone off, and others were provided in their stead; but there was another full discovery made before that, by Mr. De la Rue, by which their wicked purpose was a second time disappointed.

Gentlemen, upon the discovery of this design, it was thought very fitting to take all possible care, for preventing such a dismal stroke, and for punishing such heinous offenders; there was a proclamation issued for the apprehension of a great many of them that absconded, which had a very good effect, by the taking of several of them, besides those that were taken up by warrants before; and these three prisoners now at the bar, are indicted for this horrid and traitorous conspiracy, and for pursuing this wicked design, and are now upon their trial for it.

Now, Gentlemen, you have heard the evidence, which you are to consider of in relation to these prisoners, and how far they are affected by it. I must tell you, that captain Porter gives a very full evidence against all three; he tells you how and in what manner they were all engaged, and what parts they had all in the prosecution of this bloody enterprize. As for Mr. Charnock, he seems to have been a remarkable person in almost all the parts of it, a great carrier-on and promoter of it, was to be an actor in it, and provide his number of men: and it seems he was a person much trusted by sir George Barclay; and he spoke to Mr.

Porter of a commission that sir George Barclay brought with him from king James, which was to levy war upon the person of king William, which it seems was understood to authorize them to assassinate the king. Mr. King went to view the ground, and Charnock and he were at the several consultations, and Keyes was at Porter's lodgings, and at divers other consults, when the carrying on of this design of assassinating the king, was debated and resolved upon. Mr. Porter's evidence you have heard at large, and I doubt not you take good notice of it, and the king's counsel have repeated the most material parts of it, therefore I need not do it again. And as to Mr. Charnock, you have heard what evidence is given by De la Rue and Bertham; for though Mr. Charnock says, all that is testified by the other witnesses is only talk and discourse, and that bare words are not high-treason, but there must be some overt-act; therefore you are here to consider particularly what the other witnesses say against him, and whether another overt-act is not proved. De la Rue (who was one of the discoverers, and (as he tells you) he resolved so to be so soon as he could get a perfect knowledge of the whole design) does inform you, that between the 15th and 22d of February, he met Mr. Charnock, and enquired of him how the business went; to which Charnock returned answer, That the design did languish, saying, that people were not so warm as formerly, and did believe the king had notice, for that he had not been abroad on Saturday; that too many were acquainted with it, and therefore thought it might come to nothing: but the main business, which was the landing of king James, would be speedy; and though the discourse may be reckoned only words, yet they do import, at least acknowledge, to the carrying on this design before that time.

But then consider what you are told by Bertham, another of the witnesses, that he being informed by Trevor, that Mr. Charnock would speak with him, he thereupon went to Mr. Charnock's lodgings, where Charnock took him aside into a back room, and told him that king James was a-coming, and there were great hopes of restoring him; but there was something to be done to facilitate it, which he would do well to join in: and when he asked what it was, Charnock told him, he must go abroad and take the air, where he would meet with some of his acquaintance; and there was no way to effect it, but by taking off the spark; and by doing that thing, it would most probably be brought about that king James should be restored. Now, though it was not directly said they were to kill the king, yet it is manifest what was meant by it: for the taking off no one person in England, besides king William, could conduce to the return of the late king. And for his encouragement, he told him further, that if Bertham would undertake the doing of it, it would answer his expectations. And then you are told again by Bertham, that he met Charnock, at Lincoln's-inn-gate, upon that

very day that it was last to have been executed, which was the 22d of February, where Charnock told him he suspected a discovery was made, and that there were warrants out against them: and that therefore the best way was, to go immediately and take him off, and then all would be well.

Now I must tell you, gentlemen, that what he says, that bare words are not treason, is very true in some cases; for loose words spoken, without relation to any act or design, are not treason or an overt-act; but arguments, and words of persuasion, to engage in such design or resolution, and directing or proposing the best way for effecting it, are overt-acts of high-treason, as much as if two agree together to kill the king, though the agreement be verbal only, and not reduced to writing: likewise, consulting together for such a purpose, is an overt-act of treason. For it is the imagination, the compassing and designing the death of the king, that is the treason. For the law is very careful of the person of the king, and hath fully provided for his safety; and this treason is the first species mentioned in the statute. But there is no way of discovering those compassings or imaginations, in order to punish a traitor, but by some external act, that may be sufficient to manifest such an intention and purpose; and that which is a sufficient manifestation of such a design, is another overt-act: but there have been proved several meetings, and consultations and proposals at those meetings, about the ways and methods for bringing about the design of assassination. And it was never yet doubted, but to meet and consult how to kill the king, was an overt-act of high-treason. Besides, Mr. Charnock's endeavouring to engage Bertham in this enterprize, and the argument he used to persuade him to it, that it was a means to restore the late king, and telling him it would answer his expectation, is another overt-act. And therefore, how far Mr. Charnock is guilty of the charge in the indictment, you are to determine when you have well considered the nature of the evidence, and what answer Mr. Charnock hath made to it; which shall be opened to you by and bye.

Then, gentlemen, concerning Mr. King, who is the next man, he has these witnesses against him: captain Porter says, that he was very frequently at the meetings and consultations, and that he came to him when he and Knightley were to view the ground, and desired to be one of them, and they went together, and did view the ground; this was some time before the 15th of February, in the same week.

And you may also remember the evidence given by Mr. De la Rue, that Mr. King told him about November or December, that a major-general would come from France, and that money was to be advanced; and that after captain Porter and Mr. King told him, that the major-general was come. On Friday the 7th of February, King said he was to go out of town with Knightley and Durant, to know whether the king went to Richmond or Houn-

slow. Being informed the king had a design to go to Hounslow, and be returned on the Sunday following, Mr. King did say they had found out the rarest place, and the fittest that could be for that purpose, within a quarter of a mile of the king's house at Richmond; and that there was to be an ambuscade, and asked the witness whether he would be one in the ambuscade; but he liked it not, but had rather attack the guards. He had been at the Dog-tavern with Mr. King, and discoursing about this undertaking, Mr. King the prisoner had told this witness, that several of the guards were come from France, and that several conferences were had about taking off the king; and he did not approve of Mr. Charnock, in regard he did not talk like a soldier, and was for an easy post without danger; and as for captain Porter, he had another objection against him, he had as much fat in his brains as he had in his body; and so the one wanted skill and the other wit. But still Mr. King owned his being concerned in the carrying on of this design of assassination: for after the design of the ambuscade was disapproved of, and agreed that the guards should be attacked, and the king in his coach, at Turnham-green; he by discourse with De la Rue, presses his consent to it; besides, he told Pendergrass, who was to be one, and to have Porter's gun to shoot the king, he hoped Pendergrass would not be afraid to break the glass windows.

Mr. Keyes stands upon it, for his part, that he was only a servant to captain Porter, and if he had done any thing amiss, it was no more than what his master bid him do; and that he knew of no design; and that it was a hard thing that he should be troubled in this matter; for if a master send his servant to buy horses or arms, if he does not know how they are to be employed, afterwards it doth appear they are to be employed in assassinating the king, that the servant should be punished for obeying his master. But the question is, whether Keyes knew what the design was? Captain Porter says, he did know when he hired the horses for what purpose they were to be used. And he says further, that he was with them at many of the consults at the Globe Tavern and other places, where he did eat and drink with them, and was privy to the design, and concerned in it.

Then, gentlemen, by the other evidence it is proved, that he was in company several times when the design was discoursed of, and that he was used as a companion to captain Porter, and used to sit and eat and drink with him and the rest of them at the same table; and when they drank to the restoration of the late king, and to the squeezing of the Rotten Orange, Keyes was there, and pledged the health, which shews the intention of the man; and this was upon Saturday the 22nd; and when news was brought that the design was disappointed by the king's not going abroad that day, he went out to get intelligence, and brought in word that the guards were come home, and that all their horses were in a foam,

and the king's coaches returned to the Mews; all which is evidence that he knew of the design, and consented to it. So that I must leave it to you upon the whole, though there be a great deal more evidence than I have mentioned; you are the judges how far it amounts to prove them guilty.

But then, gentlemen, as to what they say, that the witnesses do testify by hearsay, that is not evidence; but what they know themselves, or heard from the prisoners; and so Mr. Charnock insists upon it, that what Mr. De la Rue says against him, is mostly what captain Porter told him, and therefore cannot make a proof, by two. It is true, and therefore I did omit repeating a great part of what De la Rue said, because as to him it was for the most part hearsay: But whatsoever evidence has been given of any fact done within the witness's own knowledge, or of any consult or discourse of the prisoners themselves, that you are to take notice of as good evidence, and consider of it.

But then there is another thing that is objected against the evidence, and that is, as to the fairness and credibility of it, because the witnesses, especially Mr. Porter, by their own acknowledgment, are involved in the same crime, and therefore cannot be good witnesses against others.* Now, as to that objection, I must tell you, first, that prisoners under those circumstances are good legal witnesses, but their credits, as in all other cases, are left to your consideration. But, secondly, as to the weight of this objection against their credit, you may consider that traitorous conspiracies are deeds of darkness as well as wickedness, the discovery whereof can properly come only from the conspirators themselves; such evidence has always been allowed as good proof in all ages; and they are the most proper witnesses, for otherwise it is hardly possible, if not altogether impossible, to have a full proof of such secret contrivances; such discoveries are to be encouraged in all governments, without which there can be no safety: And though men have been guilty of such heinous offences, in being partakers or promoters in such designs, yet if they come in and repent, and give testimonies thereof by discovering the truth, great credit ought to be given to them, for such evidence was ever accounted good. Besides, as to two of them, De la Rue and Pendergrass, which were the first that discovered, before they were apprehended, or suspected themselves to be in danger, and therefore do not swear to save their own lives, but resolved upon it to save the life of the king. And Mr. Pendergrass had not any design to be an evidence, who though he discovered it almost as early as he knew it, yet refused to tell the names, upon a principle of honour, till he had the king's word that he should not be pressed to come in as a witness; and he tells you

* See what the Chief Justice said in the Case of Despard, A. D. 1803.

himself the reason why he refused then, and why he comes in now, because captain Porter was his friend, to whom he was obliged, and he never intended at first to discover his name, nor afterwards to be evidence against him; but upon captain Porter's being taken, and discovering himself and his witness, he thought that he was absolved from all that obligation, and therefore resolved to appear as a witness against the rest: And this does not depend only upon the credit of Pendergrass, but also upon the testimony of my lord Portland, and my lord Cutts, who have given you a full account of the manner of it.

And Mr. De la Rue tells you, that it was his design at first, even a year ago, if the conspiracy had so far proceeded as to be ready to be put in execution, he would have endeavoured to have prevented the mischief by acquainting the king with it; and he gives you an account how he revealed it to brigadier Lewson, and to my lord Portland, and after to the king, which is confirmed by my lord Portland; so that these are witnesses beyond all exception, and if such evidence as this be not allowed to be good, the government can never be secure against such villainous enterprizes and wicked machinations.

Gentlemen, this is not trepanning, for it doth not appear by any evidence, nor have I heard the prisoners pretend that these persons did go about to seduce them into the design, but indeed were endeavoured to be seduced into it themselves; and though they kept them company afterwards, yet it was only with a purpose to acquaint themselves with the real intentions of these wicked men, which is lawful and just in order to the making a full discovery of their so dangerous a villainy; and therefore they ought to receive all countenance for doing so great a service to the government, without undergoing the imputation of being trepanners.

Gentlemen, there is no more occurs to me at present that is material to be observed or taken notice of; I leave it to you, you have heard what the witnesses say against the prisoners, you have heard what the prisoners have said for themselves, you are the judges of this fact; if you are not satisfied that here has been sufficient evidence given to prove them guilty, you will acquit them; but if you are satisfied, that upon the evidence and all the circumstances of this case, that they are guilty, I suppose you will discharge your consciences, and give your verdict accordingly.

Then the Jury withdrew to consider of the evidence, and in less than half an hour returned, and found all the three prisoners Guilty of the High Treason for which they were indicted, and the court adjourned till six o'clock that evening.

Post Meridiem eodem Die.

About seven o'clock the Lord Mayor, and the Common Serjeant, with as many of the

court as would make a *quorum*, came upon the bench, and by proclamation in usual form the court was resumed, and the prisoners called to the bar to their judgment.

Cl. of Arraignments. Robert Charnock, hold up thy hand. (Which he did.) You stand convicted of high treason, for conspiring the death of our sovereign lord the king by assassination, what can you say for yourself, why the court should not give judgment upon you to die according to the law?

The Jailor first made him to kneel; and then, when he rose up, he spoke as follows:

Charnock. Sir, I have a great deal to say, if I knew when was the proper time to apply myself to the saying what I have to say.

Com. Serj. You are now called to, to know what you have to say.

Char. Sir, I would put this question, because I am ignorant in forms of law, Whether it be practicable for me to say any thing before judgment or not? for I have no pardon to plead to hinder the judgment; and therefore I would know, if it be practicable to say any thing before judgment?

C. Serj. Yes, Sir, it must be before judgment; because what you are called to, and asked now, is what you have to say in arrest of judgment.

Char. I have many things to say as to observations I made out of the indictment, and upon my trial, if this be my time to offer them.

C. Serj. Yes, Sir, it is your only time.

Char. Then, Sir, I think the fact is ill laid: We are indicted here for high treason, in conspiring the death of the king, and no overt act is proved against me; I speak for myself, I suppose these gentlemen will speak for themselves.

C. Serj. At present you are the only person that is asked the question; therefore pray go on, and say what you have to say in arrest of judgment. You say the indictment is ill laid, wherein is it so?

Char. I do find fault with the indictment, because it is laid for assassinating the king; and all that is proved against me, was, That I was in company where such a thing was discoursed of: Now I am advised, and my own reason tells me, that being in company is no proof of my giving my consent to the thing; and without my consenting, there can be no overt act to make me guilty of the treason. It is said, 'that I and my accomplices,' though there are none named but us three, 'did meet together, and consult of this matter, and that we bought and provided horses and arms:' Which I take to be the only overt act. And of all these things there is not one tittle proved; and therefore, with submission to the court, the indictment is naught in that respect. And this, I think, I may speak, not only for my own sake, but for the sake of these gentlemen that stand by me; if there be nothing proved against us of an overt act, as laid in the indictment, we ought not to be condemned.

Com. Serj. Look you, Mr. Charnock, you move nothing against the indictments, but only run into the proof: That matter is quite at an end, and we cannot enter into debate about it; you have had a fair and a legal trial, and upon that trial the jury has found you guilty.

Char. I have not had a fair and an equal trial, Sir.

Com. Serj. Yes, you have had both a fair and a legal, and an equal trial.

Char. If you please to leave out the word 'legal,' because it perhaps may be according to the strict forms of law: But I say it was not a fair and an equal trial, because in the last act of parliament, which was made for regulating trials in cases of treason, the equity and reasonableness of a prisoner's having that which was denied me, that is a copy of the indictment and counsel, is laid down as the ground and reason of making the act: and without that it never had been made: It is in the preamble of the act, which I have looked upon since I went out of the court; and though as to the time of the commencement, there is a certain day prefixed, yet the equity of the act is always the same, and that equity I take myself to be intitled unto; and therefore being denied the benefit of it, I think I had not an equal and a fair trial.

Com. Serj. Sir, you have very unreasonably objected this matter of this act of parliament at your arraignment, and upon your trial, and now; but your objection is of no moment or validity in the world: For the act is to commence *in futuro*, and you are tried according to the course of common law before that act can take place; and it is the common law only that this court can proceed by, and you be tried by.

Char. Sir, I insist not upon the law itself, but only upon the equity of it, and the reasonableness of the thing.

Com. Serj. Courts of justice are to go according to rules of law, and that is equal that is according to those rules; I say again, Sir, you have had a fair, a legal, and an equal trial, and have been treated with all the candour and temper that I believe was ever shewn to any persons in your condition.

Char. I had not counsel allowed me to assist me.

Com. Serj. The law allows it you not; if it had, you should have had it.

Char. Then my counsel were ignorant people, to instruct and advise me, that by the equity of this act I ought to have it.

Com. Serj. It was never practicable before, nor can be, till the time that this act takes place.

Char. Sir, I cannot argue with the court in matters of law; but as to the evidence, I say, it did not come up to the indictment.

Com. Serj. If you have any thing to except against the indictment, that is very proper for you to do, and if you will propose it, we will hear you.

Char. Sir, I find fault with the indictment in

VOL. XII.

several particulars; all the facts are laid in the parish of St. Clement Danes, and there is not one fact proved to be done there.

Com. Serj. It is not material that the facts should be proved to be done in the particular parish laid in the indictment; it is sufficient, if they be proved to be done in the county.

Char. There is not one fact proved to be done in that parish.

Com. Serj. All that is against the evidence, which we cannot at all take notice of after the verdict.

Char. I insisted upon several things, whereby it was impossible that the evidence could be true, and mentioned several things, wherein the indictment was erroneous, and the evidence not consistent with it, or at least not of such validity as to affect me; all which things if I might have had counsel to argue for me in point of law, (and I look upon it as a very great hardship that it was denied me.) as likewise that my lord chief justice over-ruled what I offered about trapanners, as I take these witnesses to be, out of sir Robert Atkins's book, and what I quoted out of my lord Hale's Pleas of the Crown, and Coke's Institutes.

Com. Serj. Mr. Charnock, if you please to offer any point of law to the court to stop judgment, we are ready to hear it; but you ought not to reflect upon the court.

Char. Where a man is dying, sure he may have leave to take notice of what hardships he has lain under.

Com. Serj. Pray, sir, hear me; no men that ever stood in your place have had more indulgence and favour shewed them, nor I believe, so much neither. Those of us that are here, and were at your trial, do think you do very much amiss, to make any reflections upon the court, after you were so fairly dealt with. If you have any thing that is material to offer in arrest of judgment, pray let us hear it: but we must over-rule all discourses of this nature, it is a vain sort of discourse, and will be of no use or service to you at all.

Char. Truly, I know not what it is possible for me to urge which you will think to be material, if I cannot urge false Latin and inconsistencies. There have been heretofore arrests of judgment, and that must sure have been upon some error or other.

Com. Serj. It is true, but you assign none; you abound in words, but will not offer any thing that is fit for you to offer.

Char. Sir, I assign this particularly as an error, and if it be not, I cannot tell what is: I am upon my last legs, and stand here for my life, and ought to be allowed all legal advantages. One particular thing is this, Whether the scene of the fact being laid to be at the parish of St. Clement Danes, there ought not to be proof that such facts were done there; and if so, whether it be not an error, that there was no proof of any one fact done there? And then the next thing is, we are charged to have bought horses and arms in the indictment, and

5 A

there was no proof of any horses or arms bought; I am sure as to me there was not.

Com. Serj. I told you before, all this is to no purpose; you enter into the evidence, which is matter of fact, which is all over, and we cannot enter into any consideration of it, therefore pray do not spend our time: but if you have any thing that is an objection to the frame of the indictment, let us hear it.

Char. Then I think that the indictment is uncertain; it says, 'quadraginta homines equestres aut circiter de ipsis Roberto Charnock, Edwardo King, et Thoma Keyes;' this is either not true, or it is nonsense: for if there be 40 horsemen, or thereabouts, of Robert Charnock, Edward King, and Thomas Keyes, that cannot be true, for they cannot make forty: and if you take in the 'alii Proditoribus ignotis,' that will make it uncertain, and that uncertainty will make the indictment void.

Com. Serj. I thought my Lord Chief Justice had satisfied you as to that objection; you repeat but part of the sentence: It is said, 'de ipsis Roberto Charnock, et prædictis aliis Proditoribus ignotis, ac aliis' that is certain enough. I thought we should have heard no more of that frivolous objection, but you had been satisfied with the Judges' answer to it.

Char. I am satisfied in point of fact that they construed it so; but these are the words of the indictment as they were read to me.

Com. Serj. You shall have the words read to you again. Read them.

Cl. of Arraignments. 'Quod quadraginta Homines Equestres aut eo circiter de ipsis Roberto Charnock, Edwardo King, et Thoma Keyes, et prædictis aliis Proditoribus ignotis, ac aliis.'

Com. Serj. You took but part of the sentence, or else you could never have made that objection.

Char. Then, sir, here is 'tunc et ibidem,' what is that.

Com. Serj. You can easily tell that sure; it is then and there.

Char. What, *ibidem*? What word is that?

Com. Serj. It is the best word that could be used; what word would you have had?

Char. *Tunc et ibi*, is then and there.

Com. Serj. No, *ibidem* is a better word, and is always used in our pleadings at law.

Char. Then I have only this in general to say; whether it be possible for a man that is ignorant in forms of law to defend himself without counsel? I must desire counsel to look into the indictment and to assist me.

Com. Serj. That is what we cannot allow by law, unless you offer something that may be such an objection as the court shall think fit to have argued by counsel.

Char. But how shall I that am ignorant in the law, know how to offer you that which you will think fit to hear counsel to?

Com. Serj. You may offer any thing that you think is an exception, and the court will consider of it; for I think it is my duty, and every man's that has the honour to sit here by

the king's commission, to lay as much weight upon any objection that the prisoner does offer, as it will bear; but if nothing be offered that is of the least weight or moment, we being to do our duty equally between the king and the prisoner, we cannot allow counsel when there is nothing before us to allow it upon.

Char. You will not, it seems, let me have such assistance, as I may offer you something material.

C. Serj. You know well enough we cannot do it; pray do not spend our time to no purpose.

Char. Nay, Sir, if you be in haste, I will not trouble you any longer.

C. Serj. You have no reason to say we are in haste; I am sure you have had all the indulgence and patience that could be; you are at liberty to offer any thing that you can, but to spend the time of the court in bare words is not reasonable.

Char. The law was never my practice, Sir, nor study: I perceive, whatsoever I offer signifies nothing; therefore I beg your pardon for the trouble I have given you; I shall not attempt to offer any thing further.

C. Serj. You may offer what you will, we will hear you.

Char. Sir, I perceive whatsoever I say is unacceptable, and so I had as good let it alone.

C. Serj. You shall be heard to say whatever you think is for your interest to say.

Char. I thought these things were for my interest to offer; but I see it is to no purpose; therefore I have no more to say; I have done.

C. Serj. You may offer what you will, and you shall be heard with all the patience and candour imaginable.

Char. I see it is impossible for me to offer any thing that the court will think material; therefore it is in vain for me to speak, and trouble myself and the court with what will be of no use to me.

Cl. of Arraignments. Edward King, hold up thy hand (Which he did.) You stand convicted of the same high-treason: what can you say for yourself, why the court should not give judgment upon you to die according to the law? (Then he was made to kneel, and rise up again.)

King. What Mr. Charnock has said, all of it I do imagine to be material; and since he is not to be heard, I have done; I can say no more.

Cl. of Ar. Thomas Keyes, hold up your hand: you are in the same case with the prisoner that went last before you: what can you say for yourself, why the court should not give judgment upon you to die according to the law? (He was made to kneel, and rise again.)

Keyes. Sir, I have had no counsel, nor no assistance since I have been in prison.

C. Serj. That you alledged upon your trial, and you were then told you might have had counsel, if you had thought fit; for you had an order for it, and you come too late to offer any thing of that nature now. But the question that is now asked you is, What have you

to say for yourself, why judgment should not pass upon you?

Keyes. I was only a servant.

C. Serj. You have been told, that will not excuse a man in such a case.

Keyes. I cannot help it, Sir, I have done; I hope you will take care of my wife and children when I am gone.

[Then Proclamation was made for silence, whilst Judgment was in giving; which the Common Serjeant, sitting down upon the Bench, pronounced thus:]

Common Serj. Robert Charnock, Edward King, and Thomas Keyes, the prisoners at the bar: you have been severally indicted for high-treason; you have pleaded not guilty, and put yourselves, for your trial, upon the country, which country have found you guilty: you have had the benefit of a fair, lawful, indifferent, and equal trial, according to the laws of this land; those very laws, which you are charged in this indictment to have conspired to subvert. It is a crime of the highest nature that the law knows: you are gentlemen of liberal education, and I hope this will bring you to some reflection, both upon the state of your own case, and the blackness of your offence, in the time you have to live, which I fear is but short: it is certainly the heinouslest crime that any persons can be guilty of; the murdering of a prince in cold blood, and involving your country in slaughter and confusion. I have nothing more to do, but to pronounce the judgment that the law has provided for such offenders, and which the court doth award:

‘That you go from hence to the place from whence you came; and that from thence you be drawn upon a hurdle to the place of execution, where you are severally to be hanged by the neck, and cut down alive; your bowels and privy members to be cut out from your bodies, and to be burnt in your view; your heads to be cut off, your bodies respectively to be divided into four parts; which heads and quarters are to be at the king’s disposal: and God have mercy upon your souls.’

Char. Sir, I desire we may have the favour to have our friends and relations come to us while we are in prison.

C. Serj. You shall have all the liberty of your friends and relations coming to you, that you can reasonably desire.

Char. And I hope we shall have no hard usage in prison.

C. Serj. No, God forbid you should! You may assure yourself you shall have none.

(Then the Sessions of Peace for London, and of gaol-delivery of Newgate for London and Middlesex, were adjourned unto Saturday the 21st of March following.)

Accordingly on Wednesday the 18th of March, 1696, they were all three drawn from Newgate to Tyburn on sledges, where they delivered the following Papers to the sheriff:

Mr. CHARNOCK’S PAPER.

That I might avoid distractions, and be composed as much as is possible at the time of my execution, I thought it much more proper to communicate this to the sheriffs, than to give myself the uneasiness of speaking, leaving it to them to publish (if they should think convenient) for the satisfaction of the world; and in what I have to say, I have taken as much care as I could to be short, that I might not lose time in my greatest concern.

As concerning an invasion intended by king James upon England, there was certain intelligence of it from abroad, I presume every body was satisfied, and to the facilitating of which, I own that myself and some others did agree upon the undertaking to attack the prince of Orange and his guards, for which I am now to suffer; but I think myself obliged, by all the ties imaginable both of conscience and honour, to declare, that as for any order or commission of king James’s for assassinating the prince of Orange, I never saw nor knew of any, but have had frequent assurances of his having rejected such proposals when they have been offered.*

I confess, I did hear that there was a commission arrived for levying of war; and which was natural to believe, if the king was in such a readiness to come over as was reported; but

* “Upon the discovery of the Assassination Plot, parliament voted an Address to his majesty, to desire him to issue his royal proclamation to banish all Papists from the cities of London and Westminster, and ten miles from the same; and that he would give instructions to the Judges going the circuits, to put the laws in execution against Papists and Non-jurors. And, as the greatest test of their loyalty, the Commons drew up this form of Association, to be subscribed by all the members.

“Whereas there has been a horrid and detestable conspiracy formed and carried on by Papists and other wicked and traitorous persons, for assassinating his majesty’s royal person, in order to encourage an invasion from France, to subvert our religion, laws, and liberty: We, whose names are hereunto subscribed, do heartily, sincerely, and solemnly profess, testify, and declare, that his present majesty king William is rightful and lawful king of these realms: and we do mutually promise to engage, to stand by, and assist each other to the utmost of our power, in the support and defence of his majesty’s most sacred person and government, against the late king James and all his adherents, And in case his majesty come to any violent or untimely death (which God forbid!) we do hereby further freely and unanimously oblige ourselves to unite, associate, and stand by each other, in revenging the same upon his enemies and their adherents, and in supporting and defending the succession of the crown, according to an act made in the first year of

if there was any such authority as that, I declare I never saw it.

As to what regards the body of the Roman Catholics, I must do them this justice, and which I dare be positive in, that they had no manner of knowledge of this design; nor do I believe it was communicated to any other party of such as are reputed the king's friends, but carried on merely by a small number, without the advice, consent, or privity of any parties whatsoever.

'the reign of king William and queen Mary, intituled, 'An act declaring the rights and liberties of the subject, and settling the succession of the crown.'

"This Association was the three following days signed by all the members who came to the House; and because some others had absented themselves upon pretence of health or business, but in reality to avoid setting their hands to the Association, it was ordered on the 27th of February, 'That such members, who had not already, should in sixteen days sign it, or declare their refusal, notwithstanding their leave to be absent.' On the appointed day, March 16, the names of such members were called over, as were absent upon the last call of the House, and several of them being still absent, the Speaker was ordered to write to those who were in the country, and had not signed the Association, or declared their refusal to do so, to know what they would do, and return their answer by the first opportunity; and at the same time the clerk of the House was ordered to attend such members as were ill in town, with the association, in order to their signing the same, or receiving their answer or refusal. The absent members seeing themselves so pressed, and the nation at this time in so great a ferment against the disaffected, thought it prudent to yield to the times, and either to subscribe the association, or promise to do it upon their first coming up to town, though it were against their principles to own king William to be rightful and lawful king. However, the Association was on the 3rd of April presented to the king by the Commons in a body, with this request, 'That his majesty would order both that, and all other Associations by the Commons of England, to be lodged among the records in the Tower, there to remain as a perpetual memorial of their loyalty and affection to his majesty.' Whereupon the king told them, 'That he took this as a most convincing and acceptable evidence of their affection. And, as they had freely associated themselves for his and their common safety, he did heartily enter into the same Association, and would be always ready with them, and the rest of his good subjects, to venture his life against all, who should endeavour to subvert the religion, laws, and liberties of England.' And he promised them, that this and all other Associations, should be lodged among the records in the Tower. The next day the Commons made a resolution,

I ask forgiveness of all the world for what offences or injuries I have done to them; and I am (I bless Almighty God) in perfect charity with all mankind. ROBERT CHARNOCK.

MR. KING'S PAPER.

I am now within a few moments of eternity, brought to this place by the just hand of God, in punishment of all my crimes, but particularly of that of which I have been lately arraigned, and for which I stand here con-

'That whoever should by word or writing affirm, that an Association entered into by any member of this House, or any other person, was illegal, such person should be deemed a promoter of the designs of the late king James, and an enemy to the laws and liberties of this kingdom.'

"The Lords resolved on an Association as well as the Commons. The motion was much opposed by the earl of Nottingham, as that of the Commons had been by sir Edward Seymour and Mr. Finch. Their objections turned chiefly upon this, that 'rightful and lawful' were words, that had been laid aside in the beginning of this reign; that they imported one, who was king by descent, and so could not belong to the present king. They said, that the crown and the prerogatives of it were vested in him, and therefore they would obey him, and be faithful to him, though they could not acknowledge him their rightful and lawful king. Great exceptions were also taken to the word revenge, as not of an evangelical sound; but that word was so explained, that these were soon cleared. Revenge was to be meant in a legal sense, either in the prosecution of justice at home, or of war abroad. And the same word had been used in that Association, into which the nation entered, when it was apprehended, that queen Elizabeth's life was in danger by the practices of the queen of Scots. At last the Association was carried in the House of Lords, with this difference from that of the Commons, that instead of the words 'rightful and lawful king,' these words were inserted, 'That king William hath the right by law to the crown of these realms; and that neither king James, nor the pretended prince of Wales, nor any other person, hath any right whatsoever to the same.' This was done to satisfy those, who said, they could not come up to the words 'rightful and lawful.' And the earl of Rochester offering these words, they were thought to answer the ends of the Association, and so were agreed to. Ninety-two only of the Commons, and fifteen of the peers, refused to sign voluntarily.

"The Association was carried from the houses of parliament over all England, and was signed by all sorts of people, very few only excepted. The bishops also drew up a form for the clergy, according to that signed by the House of Lords, with some small variation; which was so universally signed, that not above an hundred over all England refused it." Tindal.

demned; but I hope that goodness of God, which has given me a sense of my wickedness, will accept my repentance, and shew mercy on me; which I hope to obtain, through the passion and merits of my Redeemer, upon whom I entirely cast myself.

And that I may find his mercy, I hink myself obliged to do justice to my neighbour, that so none may suffer wrongfully on my account. And, therefore, as I am soon to answer the truth of what I say before the tribunal of God,

First, I declare, that I never saw any order or commission for king James's promoting the assassination, for which I am condemned; neither do I know of any such order or commission.

Secondly, That this design was not undertaken with any general knowledge or approbation of any body of men, either Catholic or Protestant.

Lastly, That I did not engage in it on presumption of any king-killing principles that could justify such an undertaking, but was drawn into it by my own rashness and passion; for which, and all other sins, I heartily beseech God to forgive me.

And I hope, that such who think the mis-

fortune of their imprisonment or trouble is derived from my having been engaged in this enterprize, or such to whom it has any ways given scandal, that they will admit me to their pardon, as I freely and heartily forgive all mankind. In this disposition of a sincere repentance, and true charity, I commend my soul into the hands of God, and hope to find mercy from him. And for this I beg all your prayers.

EDWARD KING.

Mr. KEYES'S PAPER.

I am going to appear before the living God; I trust in his mercy, that he will forgive all my sins committed to this last moment of my life. God is just in all his judgments, and I accept of this death as the punishment of my iniquities. I forgive all my enemies, and hope, through a hearty repentance, and the merits of my Saviour, to obtain mercy.

Have mercy on me, O Father of Mercy, and through thy only Son forgive me all my sins.

THOMAS KEYES.

After which they were executed as traitors, and their quarters exposed about the city.

END OF VOL. XII.











Cobbett, William, 1763-1835 / Cobbett, William, / Howell, Thomas Bayly

Cobbett's complete Collection of State Trials and proceedings for high treason and other crimes and misdemeanors from the earliest period to the present time with notes and other illustrations

Bd.: Vol. 12. - 1687 - 1696

London (1812)

Crim. 59 r-12

urn:nbn:de:bvb:12-bsb10394021-2